Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

NEW PRIME d/b/a PRIME, INC. and
SUCCESS LEASING, INC.,

Petitioners,

vs.

OWNER OPERATORS INDEPENDENT DRIVERS
ASSOCIATION, INC., ET AL.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

PETITION FOR WRIT OF CERTIORARI

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January 11, 2000

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QUESTION PRESENTED

When Congress passed the ICC Termination Act of 1995, and expressly provided for judicial enforcement of agency "orders," did it thereby intend to create a private right of action to enforce not just orders, but also regulations promulgated by the federal agencies that inherited the ICC's enforcement authority?

PARTIES

The caption of this case contains the names of all parties. Petitioners New Prime, Inc. d/b/a Prime, Inc. and Success Leasing, Inc. have no parent or subsidiary companies.

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PETITION FOR WRIT OF CERTIORARI

New Prime, Inc. d/b/a Prime, Inc. and Success Leasing, Inc. respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on August 10, 1999.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit that gives rise to this petition is reported at 192 F.3d 778, and is reprinted in Appendix A hereto ("App. A") at pages 1a-17a. The opinion of the United States District Court for the Western District of Missouri dismissing respondents' complaint is unpublished, and is reprinted as Appendix B, App. 18a-23a.

JURISDICTION

The judgment of the Eighth Circuit sought to be reviewed was entered on August 10, 1999. Because the government was a party to a case consolidated for oral argument in the court of appeals, the petition for rehearing was not due for 45 days, or until September 24, 1999, under Fed. R. App. P. 40(a). Petitioners timely filed a petition for rehearing and a petition for rehearing en banc on September 23, 1999, which were denied on October 13,

1999. App. 31a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

At issue in this case are §§ 14701 through 14705 of Title 49 U.S.C. These sections are reprinted as Appendix E, App. 32a-39a.

STATEMENT OF THE CASE

A. Background

The ICC Termination Act of 1995[1] ("ICCTA") disbanded the Interstate Commerce Commission and transferred some of its former responsibilities, including those at issue in this case, to the Department of Transportation and the Federal Highway Administration ("FHWA"). Although the ICC had routinely determined private trucking disputes involving its regulations when it was in existence, the current practice after its termination is unsettled. While petitioners believe the ICC Termination Act requires a party seeking damages for an alleged violation of an FHWA regulation to apply in the first instance to the agency and obtain an agency order, the Eighth Circuit did not agree. It held, in a case of first impression in the courts of appeals, that an aggrieved

[1] Pub. L. 104-88, 109 Stat. 804 (codified as amended in scattered sections of 49 U.S.C.).

party may sue directly in federal court for money damages not only when agency orders are violated, but when agency regulations are as well. In so holding, the court of appeals candidly acknowledged that it was "rather mystified" by the "inconsistent language" chosen by Congress to purportedly authorize this result. App. 13a.

B. Proceedings Below

The respondent Owner Operator Independent Drivers Association, Inc. ("OOIDA") filed this case in the United States District Court for the Western District of Missouri to enforce its view of certain "truth in leasing" regulations promulgated by the FHWA. Jurisdiction was alleged under 28 U.S.C. §§ 1331 and 1367(a) as well as 49 U.S.C. §§ 14102 and 14704. OOIDA sought money damages based on its belief that petitioners' handling of escrow funds did not comply with certain FHWA regulations. OOIDA did not first seek an order from the FHWA interpreting these regulations.

Petitioners moved to dismiss the complaint, arguing that the FHWA had primary jurisdiction over OOIDA's complaint. Petitioners also raised the alternative argument that the agency's jurisdiction over matters pertaining to its regulations was, in the absence of a formal agency order, exclusive, because Congress did not create a private right of action in federal court for perceived violations of FHWA regulations as opposed to agency orders.

The district court dismissed OOIDA's complaint on the ground of primary jurisdiction, App. 23a, and OOIDA appealed. While the case was on appeal, OOIDA applied

ex parte to the FHWA for a determination that the agency would not exercise jurisdiction over the present dispute. App. 40a-53a. Even though the district court had determined that the FHWA had primary jurisdiction, the agency agreed with OOIDA's *ex parte* request, and refused to exercise its jurisdiction in a decision entered May 29, 1998. App. C, App. 24a-30a. New Prime's petition for review from that agency decision was consolidated for appeal below, along with a substantially identical appeal and petition for review that were transferred from the United States Court of Appeals for the Sixth Circuit. App. 5a.

On appeal, the Eighth Circuit reversed the district court's holding on primary jurisdiction. App. 15a-16a. It also held that the FHWA did not have exclusive jurisdiction to interpret its own regulations. App. 14a. Although the court of appeals agreed that no agency "order" had issued in this case (App. 10a-11a), and that the ICC Termination Act of 1995 expressly provided for federal court jurisdiction only where such "orders" had issued (*id.*), it nevertheless held that other provisions of the ICC Termination Act granted a private right of action to enforce agency regulations in federal court. App. 11a-14a.

REASONS FOR GRANTING THE WRIT

The Court should hear this case because it concerns basic – and still unsettled – issues about how agency regulations governing vital nationwide industries like trucking and railroads are to be enforced now that the

ICC has been terminated. It also raises troubling questions about the length to which federal courts should go to find subject matter jurisdiction where Congress has failed to expressly grant it. The court of appeals below, in a decision that conflicts with at least three other lower federal courts, has held that the ICC Termination Act of 1995 significantly expands federal court jurisdiction by allowing private parties to obtain direct review and enforcement not just of agency orders, but also of thousands of agency regulations, even though the Act never explicitly says this. Finally, this case presents a clash of views between the administrative agency, which maintains that generally it is not obligated to hear any private disputes over its own regulations (App. 28a), and the views of at least three federal courts, which believe the agency has primary, if not exclusive, jurisdiction over these same claims.

I. The Court Should Consider Whether Congress's Enactment of the ICC Termination Act of 1995 Expanded Federal Court Jurisdiction To Allow Private Parties To Recover Money Damages For Violations of Agency Regulations.

A. The Express Language of The Act Limits Federal Court Jurisdiction to Review of an Agency "Order," Something The Court of Appeals Acknowledged Was Never Entered Here.

The ICC Termination Act very clearly limits private causes of action to review of agency "orders." *See* 49 U.S.C. § 14704(a)(1) ("A person injured because a carrier . . . does not obey an *order* of the Secretary or the Board, as applicable, under this part, . . . may bring a civil action

to enforce that *order*. . . . ") (App. 34a) (emphasis added). The court of appeals correctly recognized that this language – the only relevant statutory provision to directly address subject matter jurisdiction – was *not* sufficient to create a private right of action in the present case, where the plaintiffs are not challenging an agency order, but are claiming a violation of an agency regulation. *See* App. 10a. ("[W]e cannot ignore the plain language limiting the private right of action created by the first sentence of § 14704(a)(1) to suits to enforce agency orders."). But the Eighth Circuit inexplicably went on to read the second sentence of § 14704(a)(1), or alternatively § 14704(a)(2), to create just such a private right of action. As explained below, however, those sections do not grant a right to sue at all. Rather, they confer on a party *otherwise entitled to sue to enforce an agency order* the right to obtain both injunctive relief and money damages as part of such an otherwise-authorized suit.

The enforcement scheme of the Act gives the FHWA exclusive jurisdiction over the enforcement of its regulations. The FHWA is given authority to promulgate regulations governing the trucking industry in 49 U.S.C. § 13301(a). It has responded by passing thousands of regulations set out in 49 C.F.R. The Act gives the FHWA the specific authority to bring a civil action "to enforce this part, or *a regulation* or order of the secretary or Board, as applicable, when violated by a carrier. . . . " 49 U.S.C. § 14702 (App. 33a) (emphasis added). Thus the Act specifically gives the *agency* the authority to file civil actions to enforce "regulations." No such express authority is given to private litigants.

The lower courts are confused about whether federal court jurisdiction exists to enforce agency regulations under the ICC Termination Act. The Eighth Circuit's current reading of the Act is at odds with at least three lower federal court opinions. In fact, in an earlier decision of its own, *DeBruce Grain, Inc. v. Union Pacific R.R.*, 149 F.3d 787, 788 (8th Cir. 1998), the Eighth Circuit discussed the parallel provision of the Act pertaining to rail carriers (49 U.S.C. § 11704) and did not find that any private right of action to enforce agency regulations existed. It instead limited its discussion of remedies to the enforcement of agency orders and excess tariff claims:

> In 1995 Congress passed the Interstate Commerce Commission Termination Act under which the STB replaced the Interstate Commerce Commission (ICC) as the regulatory agency for rail transportation. 49 U.S.C. § 702. Application can be made to the STB by disappointed shippers for emergency orders similar to injunctions, 49 U.S.C. § 721(b)(4), and for damages, 49 U.S.C. § 11704. * * * *Federal court jurisdiction exists over claims for violations of STB orders* and for charges that are in excess of the applicable rate. 49 U.S.C. § 11704.

Id. at 788 (emphasis added).

The district court in *DeBruce* had reached the same conclusion. It held, in a part of its opinion not reached or discussed by the Eighth Circuit, that the parallel rail provision of the ICC Termination Act (49 U.S.C. § 11704) did not authorize private actions to enforce agency regulations. *DeBruce Grain, Inc., v. Union Pacific R.R.*, 983

F. Supp. 1280, 1284 (W.D. Mo. 1997), *aff'd on other grounds*, 149 F.3d 787 (8th Cir. 1998).[2]

The ICCTA provision construed by the district court and Eighth Circuit in *DeBruce* (49 U.S.C. § 11704) is substantially identical to the provision construed by the Eighth Circuit in the present case. 49 U.S.C. § 14704.[3] They should be construed identically. Section 14704, like Section 11704, authorizes federal civil actions only in connection with tariff questions and to enforce agency *orders*. It should not be read to authorize the broad

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[2] The Eighth Circuit's opinion in *DeBruce* did not affirm the district court's holding on exclusive jurisdiction. It instead held that the Surface Transportation Board had primary jurisdiction to consider the carrier's claims, and affirmed the dismissal of the private claim on that basis alone. *DeBruce Grain*, 149 F.3d at 789. Thus the Eighth Circuit did not need to reach the issue of exclusive jurisdiction in *DeBruce*. But, as noted above, it nevertheless appeared to characterize the parallel ICCTA rail provision as allowing a private right of action to enforce agency *orders*, not regulations.

[3] The ICCTA governs railroads and motor carriers, among others. The provisions governing enforcement actions involving railroads (49 U.S.C. §§ 11701-11707), which the *DeBruce* courts construed, are largely identical to those governing enforcement actions involving motor carriers (49 U.S.C. §§ 14701-14708). Although § 14704(a) contains a sentence authorizing injunctive relief against motor carriers that does not appear in the parallel railroad provision (§ 11704), the relevant provisions dealing with railroads (§§ 11704 and 11705) are otherwise identical in all material respects to the provisions governing motor carriers that are now at issue (§§ 14704 and 14705). *See Renteria v. K & R Transp. Co.*, Case No. CV98-290MRP (C.D. Cal. February 23, 1999) (reprinted at Appendix G, App. 54a-66a) (stating that rail provisions at issue in *DeBruce* are "identical" to the trucking regulations now at issue) (App. 63a).

jurisdiction to directly enforce agency policy and regulations that the court of appeals first recognized in this case.

The court in *Renteria v. K&R Transportation Co.*, Case No. CV98-290MRP (C.D. Cal. Feb. 23, 1999) (App. G), expressly disagreed with the FHWA's efforts to distance itself from its own regulations, holding that the exact trucking regulations now at issue did *not* authorize a private right of action in federal court to enforce FHWA regulations. App. 66a ("The Court . . . finds that there is no private cause of action under the ICCTA for damages without first obtaining an agency order."). *See also City of Laredo v. Texas Mexican Ry.*, 935 F. Supp. 895, 898 (S.D. Tex. 1996) (reading the parallel ICCTA rail carrier provisions as allowing a party to file suit in federal court "only to enforce an order of the Board, to recover overcharges or to recover under a bill of lading"). In holding that there was no federal jurisdiction for private claims to enforce FHWA regulations, the *Renteria* court expressly noted the FHWA's contrary view, but refused to accord that view any weight, stating: "It is inappropriate for a federal court to expand its jurisdiction in anticipation of agency inaction." *Id.*, slip op. at 10, App. 66a.

This case, which concerns the regulation of vitally important national industries like trucking and rail transportation, presents a question of serious public importance. The Eighth Circuit's decision significantly expands federal court jurisdiction in a way that is at odds with three federal district court opinions as well its own characterization of the ICCTA in *DeBruce Grain*. Under the approach first adopted by the Eighth Circuit in this case, parties will no longer be limited to enforcing orders that the agency itself has first entered, orders that would be

based on the agency's reasoned interpretation of its own myriad regulations. Instead, aggrieved parties will now be able to file federal lawsuits in the first instance to raise claims involving agency regulations and general agency policy. The Court should determine whether this expansion of federal jurisdiction is either necessary or wise.

B. Congress's Failure To Provide A Limitations Statute In The Act for The Cause of Action First Recognized By The Court of Appeals Also Suggests That It Did Not Intend To Create The Private Right of Action First Recognized By The Court of Appeals.

The fact that the court of appeals incorrectly read the Act to expand federal court jurisdiction is shown by a section of the Act the court failed to discuss, 49 U.S.C. § 14705 (App. 37a-38a). That section, which provides limitations periods for every cause of action under the Act,[4] shows that the result reached by the court of

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[4] Section 14705 provides only the following five limitations periods:

> (1) 18 months after accrual for a carrier to recover charges for transportation or services provided by the carrier (49 U.S.C. § 14705(a));
>
> (2) 18 months after accrual for a civil action to recover overcharges from a carrier (49 U.S.C. § 14705 (b));
>
> (3) two years from accrual to file a complaint against a carrier for damages for exceeding the tariff rate under § 14704(b) (49 U.S.C. § 14705(c));
>
> (4) *one year after the date of an order "to enforce an order of the Board or Secretary against a carrier"* (49 U.S.C. § 14705(e));

appeals cannot be what Congress intended. Section 14705, entitled "Limitation on actions by and against carriers," sets out limitations periods for five separate causes of action under the Act. There is no limitations period for the general claim first recognized by the Eighth Circuit on August 10. Instead, § 14705, like § 14704(a)(1), provides specifically that "a person must begin a civil action to enforce an *order* of the Board or Secretary against a carrier within 1 year after the date of the *order*." 49 U.S.C. § 14705(e) (App. 38a) (emphasis added). There is no mention of any limitations period for some general civil action to recover money damages for a violation of agency regulations.

The fact that the relevant limitations provisions in the Act are confined to the enforcement of "orders" shows that the Eighth Circuit erred in reading the injunctive relief provision of § 14704(a)(1) as authorizing a suit for damages for violation of a regulation. Not only is the heading of § 14704(a)(1) plainly entitled "Enforcement of order" (App. 34a), but the fact that § 14705 provides no limitations statute for any relevant violation other than an action to enforce an "order" shows convincingly that the court of appeals has simply found a cause of action where none exists.

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(5) three years for actions relating to transport for the United States Government. (49 U.S.C. § 14705(f)).

App. 37a-38a.

No other limitations periods appear in the Act. There is specifically no limitations period for any kind of civil enforcement action other than the one-year period for enforcing an agency *order* set out in § 14704(e).

The cases that have read the ICCTA to bar private actions to enforce agency regulations have stressed this lack of an applicable limitations period. The district court opinion in *DeBruce Grain*, for example, rejected a party's attempt to enforce an agency regulation, specifically noting the absence of an applicable limitation statute:

> The lack of a limitation period for the type of suit brought by Plaintiff is conspicuous and suggests that when Congress permitted "civil actions" under § 11704(b) (as provided in section 11704(c)), it meant to do so only with respect to an action to recover overcharges. To interpret § 11704(b) as broadly as Plaintiff suggests would leave Plaintiffs with no limitation period, which is an absurd result that Congress could not have intended. As one court recently observed, "a person may file suit in federal court only to enforce an order of the Board, to recover overcharges or to recover under a bill of lading." History supports this statement: Despite the presence of similar statutory language prior to the ICCTA's enactment, no Court has ever entertained a suit premised solely on alleged violations of broad, transportation policy statements.

DeBruce Grain, 983 F. Supp. at 1284 (citation omitted).

The same should be true here. The ICCTA does not authorize a private civil action to enforce an agency regulation. Only the agency may bring such an action. *See* 49 U.S.C. § 14702(a)(2) (specifically authorizing "the Secretary or the Board" to bring a civil action to enforce "a regulation . . . of the Secretary or Board"). A private

party, in contrast, may bring a federal civil action only to enforce "orders." 49 U.S.C. § 14704(a).

The Court in *Renteria v. K&R Transportation, Inc.* relied on this same lack of a limitations statute in holding that the exact provisions now at issue did not authorize the broad private right of action recognized by the Eighth Circuit on August 10:

> The court in *DeBruce* put emphasis on the structure of the applicable statutes of limitations. The Act provides for a limitation period for civil actions to recover overcharges and for civil actions to enforce an order from the Board. See 49 U.S.C. §§ 11705, 14705. There is no provision governing the filing of a civil action for any other types of damages. If other actions for damages were allowed, plaintiffs would appear to have no limitations period, a result the *DeBruce* court dismissed as "absurd." *Id.* at 1284. *This suggests Congress did not intend to permit civil actions for damages for violations of regulations.*

Slip op. at 11 (emphasis added) (App. 64a).

The confusion in the lower courts, the disagreement between several courts and the agency over the scope of the agency's powers, and the importance of these issues to the trucking industry, the railroad industry, and other entities formerly under the ICC's jurisdiction, requires the Court's intervention.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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January 11, 2000

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APPENDIX A

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-1420

Owner-Operator Independent Drivers Association, Inc., et al., individually and on behalf of all others similarly situated,	*	Appeal from the United States District Court for the Western District of Missouri.
Plaintiffs – Appellants,	*	
v.	*	
New Prime, Inc., et al.,	*	
Defendants – Appellees.	*	

No. 98-2942
No. 98-3143

New Prime, Inc., et al.,	*	
Petitioners,	*	
v.	*	Petitions for Review of an Order of the Federal Highway Administration.
United States of America, Federal Highway Administration, et al.,	*	
Respondents,	*	

No. 98-3478

Arctic Express, Inc., et al., *
*
Petitioners, *
*
v. *
*
Federal Highway *
Administration, et al., *
*
Resondents. *

Submitted: April 23, 1999

Filed: August 10, 1999

Before WOLLMAN* and LOKEN, Circuit Judges, and JACKSON,** District Judge.

LOKEN, Circuit Judge.

The ICC Termination Act of 1995[1] transferred the motor carrier regulatory functions of the Interstate Commerce Commission to the Department of Transportation and the Surface Transportation Board. *See* 49 U.S.C.

* The Honorable ROGER L. WOLLMAN became Chief Judge of the United States Court of Appeals for the Eighth Circuit on April 24, 1999.

** The HONORABLE CAROL E. JACKSON, United States District Judge for the Eastern District of Missouri, sitting by designation.

[1] Pub. L. No. 104-88, 109 Stat. 803 (1995).

§ 13501. Within DOT, the Federal Highway Administration (FHWA) administers and enforces regulations that impose restrictions on lease agreements between motor carriers and owner-operators of truck tractors, commonly known as the "Truth-in-Leasing" regulations. *See* 49 C.F.R. Part 376. A class of owner-operators has sued two motor carriers alleging that certain of their lease provisions violate the regulations. The Western District of Missouri dismissed one suit, deferring to the primary jurisdiction of FHWA. The agency then declined to exercise that jurisdiction. The result is four consolidated appeals in this court raising complex issues of statutory construction. The motor carriers and the American Trucking Association argue that the agency's statutory remedy is exclusive, while the owner-operators and FHWA argue that these private disputes should be resolved in federal court. Rejecting the motor carriers' contention, we reverse the district court's dismissal of the owner-operator claims.

I. Background and Procedural History

Independent owner-operators lease truck equipment and provide driving services to federally registered motor carriers. In Case No. 98-1420, the Owner-Operator Independent Drivers Association and individual owner-operators (the "Owner-Operators") filed a class action complaint against New Prime, Inc., a registered motor carrier, and its affiliate, Success Leasing, Inc. (collectively, "Prime"), alleging that provisions in Prime's standard

lease agreements and equipment rental-purchase contracts violate FWHA leasing regulations and are unconscionable under Missouri law. Briefly stated, the Owner-Operators challenge contract terms governing reserve funds and security deposits as violating 49 C.F.R. §§ 376.12(i) & (k).

The district court dismissed the complaint, concluding that FHWA has primary jurisdiction because the claims involve matters within the agency's expertise. The Owner-Operators then filed the first of our four consolidated appeals, arguing the district court improperly applied the primary jurisdiction doctrine. With that appeal pending, the Owner-Operators filed an *ex parte* Petition for Declaratory Order with FHWA, asking the agency to issue a declaratory order either construing the relevant regulations in their favor, or declaring that the agency does not have primary jurisdiction over their dispute with Prime. FHWA responded with a Notice of Denial, declining to exercise primary jurisdiction because the Truth-in-Leasing regulations and the issues raised by the Owner-Operators "are fairly straightforward matters clearly within the competence of a court to resolve," and because the ICC had addressed similar issues in OPA Information Bulletin No. 93-103, No. MC-C-30192, *Dart Transit Co. – Petition for Declaratory Order*, 9 I.C.C.2d 701 (June 28, 1993). In Case No. 98-2942 and Case No. 98-3143, Prime appeals FHWA's refusal to exercise its administrative jurisdiction.

The Owner-Operators also commenced an action in the Southern District of Ohio, alleging that the lease agreements used by Arctic Express, Inc., and its affiliate, D & A Associates, Ltd. (collectively, "Arctic Express"),

violate the same provisions of the Truth-in-Leasing regulations. Arctic Express appealed FHWA's Notice of Denial to the Sixth Circuit, which transferred the appeal to this court. That is Case No. 98-3478. The American Trucking Association has filed amicus briefs in support of the Prime and Arctic Express appeals, urging us to reverse the agency's refusal to exercise jurisdiction over the carriers' disputes with the Owner-Operators. The Ohio district court has stayed its proceedings pending our resolution of these appeals.

II. The ICC Termination Act and Its Antecedents

Prior to the ICC Termination Act, the ICC comprehensively regulated licensed motor carriers. Congress intended that the Termination Act substantially deregulate rail and motor carrier transportation. One area of regulation expressly addressed in the Act was dispute resolution. The Report of the House Transportation and Infrastructure Committee explained:

> In addition to overseeing the background commercial rules of the motor carrier industry, the ICC currently resolves disputes that arise in such areas. There is no explicit statutory requirement to do so. . . . The ICC dispute resolution programs include household goods and auto driveaway carriers, brokers, *owner-operator leasing*, loss and damage claims, duplicate payments and overcharges, and lumping.
>
> The bill transfers responsibility for all the areas in which the ICC resolves disputes to the Secretary (except passenger intercarrier disputes). *The Committee does not believe that DOT*

> *should allocate scarce resources to resolving these essentially private disputes, and specifically directs that DOT should not continue the dispute resolution functions in these areas. The bill provides that private parties may bring actions in court to enforce the provisions of the Motor Carrier Act.* This change will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved – by the parties.

H.R.Rep. No. 104-311, at 87-88 (1995), *reprinted in* 1995-2 U.S.C.C.A.N. 793, 799-800 (emphasis added). Consistent with this explanation, the Committee described § 14704 of the House Bill as "provid[ing] for private enforcement of the provisions of the Motor Carrier Act in court. This expands the current law which only permits complaints brought under the Act to be brought before the ICC." *Id.* at 120-121, 1995-2 U.S.C.C.A.N. at 832-33. The Conference Committee ultimately adopted § 14704 of the House Bill. *See* H.R. Conf. Rep. No. 104-422, at 221-22 (1995), *reprinted in* 1995-2 U.S.C.C.A.N. 850, 906-07.

In these cases, the Owner-Operators seek to enforce the Truth-in-Leasing regulations in court, while the motor carriers seek to preserve the prior regime of exclusive administrative remedies. FWHA has declined to exercise jurisdiction over these private disputes, which is not surprising given the above-quoted congressional "directive." Before this court, the Owner-Operators and FHWA rely heavily on the Termination Act's legislative history. Prime, Arctic Express, and the American Trucking Association urge us to ignore this history because, "[w]hen the words of a statute are unambiguous . . . judicial inquiry is complete." *Connecticut Nat'l Bank v.*

Germain, 503 U.S. 249, 254 (1992) (internal quotation omitted). That is very true, and in all events our principal focus must be on the language of the relevant statutes. But we cannot ignore the broader perspective. The motor carriers argue that the dispute resolution provisions of the Termination Act unambiguously give FWHA not just primary but exclusive jurisdiction to resolve private disputes over the Truth-in-Leasing regulations. That interpretation is at odds with the overall congressional objective of partial deregulation *and* with the relevant committees' explanations of the specific provisions in question. To decide whether the motor carriers' plain language arguments surmount these obstacles, we begin by quoting the relevant Termination Act provisions:

> **49 U.S.C. § 14701. General authority**
>
> (a) INVESTIGATIONS. . . . If the Secretary or Board, as applicable, finds that a carrier . . . is violating this part, the Secretary or Board, as applicable, shall take appropriate action to compel compliance with this part. . . .
>
> (b) COMPLAINTS. A person, including a governmental authority, may file with the Secretary or Board, as applicable, a complaint about a violation of this part by a carrier. . . .
>
> **§ 14702. Enforcement by the regulatory authority**
>
> (a) IN GENERAL. The Secretary or the Board, as applicable, may bring a civil action –
>
> (2) to enforce this part, or a regulation or order of the Secretary or Board, as applicable, when violated by a carrier. . . .

§ 14703. Enforcement by the Attorney General

The Attorney General may, and on request of either the Secretary or the Board shall, bring court proceedings –

(1) to enforce this part or a regulation or order of the Secretary or Board or terms of registration under this part. . . .

§ 14704. Rights and remedies of persons injured by carriers . . .

(a) IN GENERAL. (1) ENFORCEMENT OF ORDER. A person injured because a carrier . . . does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 [the statute authorizing at least some of the motor carrier leasing regulations] and 14103.

(2) DAMAGES FOR VIOLATIONS. A carrier . . . is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

(b) LIABILITY AND DAMAGES FOR EXCEEDING TARIFF RATE. A carrier . . . is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

(c) ELECTION. (1) COMPLAINT TO DOT OR BOARD, CIVIL ACTION. A person may file a complaint with the Board or the Secretary, as applicable, under section 14701(b) or bring a civil action under subsection (b) to enforce liability against a carrier. . . .

> (2) ORDER OF DOT OR BOARD. –
>
> (B) ENFORCEMENT BY CIVIL ACTION. The person for whose benefit an order of the Board or Secretary requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier . . . does not pay the amount awarded by the date payment was ordered to be made.

These are obviously complex provisions, creating both administrative and judicial enforcement and remedies. The private judicial remedies are in § 14704. Much of that section deals with suits to recover rate overcharges, a subject not at issue in these appeals. More relevant for our purposes are the "general" remedies in §§ 14704(a)(1) and (2). Broadly speaking, the Owner-Operators argue these provisions authorize direct actions against carriers in federal court for violations of the Truth-in-Leasing regulations, while the carriers argue these remedies are secondary to FHWA's administrative remedies in § 14701.

III. Specific Issues and Contentions

A. Does FHWA Have Exclusive Jurisdiction To Enforce the Truth-in-Leasing Regulations? A central issue is whether the Owner-Operators may bring a private right of action directly in the district court for violations of the regulations. If not, then their only remedy is to file administrative complaints under § 14701(b), and the district court was obviously correct in dismissing their action against Prime. The Owner-Operators and FHWA construe § 14704(a) as authorizing private rights of action for violations of the regulations. Prime and

Arctic Express respond that § 14704(a) only authorizes private suits to enforce FHWA *orders*, not agency regulations. Given the structure of § 14704(a), this issue has multiple subparts.

1. The first sentence of § 14704(a)(1) authorizes civil actions to enforce FHWA orders. FHWA construes this language as including suits to enforce its Truth-in-Leasing regulations, relying on cases in which the word "order" in judicial review statutes has been construed to authorize review of agency rules or regulations. *See, e.g., Northwest Airlines, Inc. v. Goldschmidt*, 645 F.2d 1309 (8th Cir. 1981); *Investment Co. Inst. v. Board of Governors of Fed. Reserve Sys.*, 551 F.2d 1270 (D.C. Cir. 1977). But those cases turned on the presumption in favor of judicial review, which does not apply in this case. Here, the issue is whether Congress has authorized private persons to *enforce* a particular type of agency action.

Viewed in context, FHWA's argument is contrary to the plain language of the statute. In § 14702(a)(2) and § 14703(1), Congress explicitly authorized FHWA and the Attorney General to sue to enforce "this part *or regulation or order*." The italicized words confirm that Congress in this statute distinguished between agency regulations and orders. Then, in § 14704(a)(1), the very next section, Congress granted private parties the right to sue to enforce an "order of the Secretary" that a carrier has not obeyed. Given the substantive and procedural differences between agency orders and regulations, and the policy differences inherent in government and private enforcement actions, we cannot ignore the plain language limiting the private right of action created by the first sentence of § 14704(a)(1) to suits to enforce agency orders. Thus,

the first sentence of § 14704(a)(1) does not authorize the Owner-Operators to sue for violations of the Truth-in-Leasing regulations.[2]

2. The second sentence of § 14704(a)(1) provides that a private party such as the Owner-Operators "may bring a civil action for injunctive relief for violations of section[ ] 14102," the section of the Motor Carrier Act that deals specifically with motor carrier leasing. Though this sentence refers only to violations of the statute, it must also include violations of FHWA's implementing regulations. Because § 14102 contains no mandates or prohibitions but simply authorizes the Secretary to adopt leasing requirements, it would be impossible for a carrier to violate the statute other than by violating rules or regulations promulgated under the statute.

Prime argues that this provision must be limited to actions brought to enforce FHWA orders because it is part of § 14704(a)(1), which is titled "Enforcement of Order." We disagree. "Section and subchapter titles cannot alter the plain meaning of a statute; they can only assist in

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[2] This question of statutory interpretation would be different if FHWA referred to its regulations as agency orders. *See Hawaiian Tel. Co. v. Public Utilities Comm'n*, 827 F.2d 1264, 1270-72 (9th Cir. 1987), *cert. denied*, 487 U.S. 1218 (1988), construing the Federal Communications Act, and *Pacific Fruit Exp. Co. v. Akron, Canton & Youngstown R.R.*, 524 F.2d 1025 (9th Cir. 1975), *cert. denied*, 424 U.S. 911 (1976), construing rail carrier provisions of the Interstate Commerce Act. Unlike the statutes at issue in those cases, the dispute resolution provisions of the ICC Termination Act expressly distinguish between orders and regulations, and the agency concedes we are dealing with regulations.

clarifying ambiguity." *Minnesota Transp. Regulation Bd. v. United States*, 966 F.2d 335, 339 (8th Cir. 1992). This sentence was added to § 14704(a)(1) in conference, and its plain language is not limited to violations of agency orders. Moreover, the sentence as construed by Prime would make little practical sense – a party suing to enforce an agency order is unlikely to need relief beyond enforcement of the order.[3]

The carriers further argue that, even if § 14704(a)(1) authorizes private actions for injunctive relief for violations of regulations promulgated under § 14102, the Owner-Operators' claims arise under regulations that were not promulgated under FWHA's § 14102 authority. In initially promulgating Truth-in-Leasing regulations, the ICC cited as authority both the predecessor of § 14102 and the statute giving the agency general power to issue regulations, now found in 49 U.S.C. § 13301(a). *See generally Global Van Lines, Inc. v. ICC*, 627 F.2d 546 (D.C. Cir. 1980), *cert. denied*, 449 U.S. 1079 (1981). Section 14102(a) authorizes the Secretary to prescribe specific types of leasing requirements. The carriers argue that the leasing regulations on which the Owner-Operators rely, 49 C.F.R. §§ 376.12(i) & (k), go beyond the scope of § 14102(a) and therefore may not be enforced by a private action for injunctive relief under § 14704(a)(1). There is a simple

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[3] Consistent with this interpretation, the Conference Report stated that private actions brought to enforce the "leasing . . . rules may also seek injunctive relief." H.R. Conf. Rep. No. 104-422 at 221, *reprinted in* 1995-2 USCCAN at 906.

answer to this contention – it is not part of the jurisdictional issues before us. Section 14704(a)(1) creates a private right of action for injunctive relief for violations of regulations promulgated under § 14102(a). The Owner-Operators invoked that portion of § 14704(a)(1) in commencing this action. Whether their claim for injunctive relief is valid must be addressed in the first instance by the district court.

3. Section 14704(a)(2) provides that "[a] carrier . . . is liable for damages sustained by a person as a result of an act or omission of that carrier . . . in violation of this part." The Owner-Operators argue this statute creates an express private right of action to remedy violations of the Truth-in-Leasing regulations. Prime argues § 14704(a)(2) must be read with § 14704(a)(1) as limited to actions to enforce agency orders. We decline to read these two subsections as interrelated. They are separate parts of § 14704(a), which is entitled, "In General." Moreover, a review of § 14704 in the two bills that were sent to conference, H.R. 2539 and S. 1396, reveals that the Conference Committee drafters reorganized this section in the final bill – the enforcement of agency orders section that is now § 14704(a)(1) and the damage remedy that is now § 14704(a)(2) were not previously linked.

The carriers further argue that the language of § 14704(a)(2) – a carrier "is liable for damages sustained" on account of a "violation of this part" – is not sufficient to authorize a private right of action for damages for violations of FHWA regulations. In this regard, we confess to being rather mystified by the inconsistent language used in the Termination Act's various enforcement provisions. In § 14702(a)(2) and § 14703(1), Congress

authorized FHWA and the Attorney General to sue "to enforce this part *or a regulation or order,*" whereas § 14704(a)(2) makes carriers liable in damages for conduct "in violation of this part." Moreover, the language of § 14704(a)(1) explicitly gives private parties the right to sue, whereas § 14704(a)(2) passively says that a carrier "is liable for damages sustained by a person." Despite these linguistic imperfections and inconsistencies, the most logical reading of the language of § 14704(a)(2) is that it authorizes private parties to sue for damages for carrier conduct "in violation of [regulations promulgated under] this part." And that interpretation is certainly reinforced by the legislative history of § 14704(a)(2). The Conference Report stated that § 14704(a)(2) "provides for private enforcement of the provisions of the Motor Carrier Act in court. . . . The ability to seek injunctive relief for motor carrier leasing . . . violations is in addition to and does not in any way preclude the right to bring civil actions for damages for such violations." H.R. Conf. Rep. No. 104-422 at 221-22, reprinted in 1995-2 U.S.C.C.A.N. at 906-07. In construing this inconsistently drafted statute, it is appropriate to use its legislative history to confirm the most plausible construction of a subsection's plain language. *See Wisconsin Public Intervenor v. Mortier,* 501 U.S. 597, 610 n.4 (1991).

For the foregoing reasons, we conclude that 49 U.S.C. § 14704(a) authorizes private actions for damages and injunctive relief to remedy at least some violations of the Motor Carrier Act and its implementing regulations. Thus, we reject the motor carriers' contention that FHWA's remedial jurisdiction is exclusive.

B. The Issue of FHWA Primary Jurisdiction. The district court properly concluded it has jurisdiction over the Owner-Operators' claims against Prime, jurisdiction that is concurrent with FHWA's administrative enforcement and remedial powers. However, as the court recognized, this does not resolve the issue of primary jurisdiction, a common law doctrine that allows a court to refer matters to an administrative agency to give the agency an opportunity to address issues within its expertise. *See Access Telecommunications v. Southwestern Bell Tel. Co.*, 137 F.3d 605, 608 (8th Cir.), *cert. denied*, 119 S. Ct. 404 (1998).

The district court invoked the doctrine of primary jurisdiction and dismissed the Owner-Operators' complaint. After the dismissal, the Owner-Operators petitioned FHWA for a declaratory order. The agency responded, refusing to exercise its discretionary jurisdiction under § 14701(a), or its discretion to commence an enforcement action under § 14702(a)(2), because Congress in the ICC Termination Act's legislative history told the agency not to allocate scarce resources to resolving private disputes. The agency further expressed its view that resolution of the Owner-Operators' claims "are fairly straightforward matters clearly within the competence of a court to resolve."

On appeal, the motor carriers argue we should compel FHWA to exercise its jurisdiction. However, they cannot point to a provision in the ICC Termination Act that overcomes "the presumption that agency decisions not to institute proceedings are unreviewable under" the Administrative Procedure Act. *Heckler v. Chaney*, 470 U.S. 821, 837 (1985); *see United States v. Gary*, 963 F.2d 180, 185

(8th Cir. 1992). The doctrine of primary jurisdiction enables a court to stay its hand while seeking the guidance of an administrative agency's perceived expertise. When the agency declines to provide guidance or to commence a proceeding that might obviate the need for judicial action, "[t]he court [can] then proceed according to its own light." *Atchison, Topeka & Santa Fe Ry. v. Aircoach Transp. Ass'n*, 253 F.2d 877, 886 (D.C. Cir. 1958), *cert. denied*, 361 U.S. 930 (1960); *see Local Union No. 189, Amalgamated Meat Cutters v. Jewel Tea Co.*, 381 U.S. 676, 686 (1965) ("the doctrine of primary jurisdiction is not a doctrine of futility"); *Skaw v. United States*, 740 F.2d 932, 938 (Fed. Cir. 1984). Accordingly, the district court should now proceed to exercise its jurisdiction over the Owner-Operators' claims against Prime.

C. **FHWA's Notice Ruling.** Prime argues that the Owner-Operators' *ex parte* application to FHWA for a declaratory order, and the agency's Notice denying that application, constitute an adjudication that violated the Administrative Procedure Act and Prime's right to due process. We strongly disapprove of the Owner-Operators' ex parte approach to the agency, and if the result had been an "adjudication" adverse to Prime's interests, we would reverse FHWA's ruling as procedurally improper. But there has been no such adjudication. FHWA's denial Notice had no more effect than if the agency had filed an amicus brief or memorandum with the district court declining the court's request for administrative guidance and expertise. To the extent FHWA expressed views that are relevant to the merits of Prime's dispute with the Owner-Operators, Prime will have ample opportunity to respond in the district court.

D. The Merits of the Underlying Dispute. Prime argues we should affirm the district court's dismissal of Count II of the Owner-Operators' complaint because the agreement containing the challenged terms was not a "lease" as defined by the Truth-in-Leasing regulations. Prime further argues we should affirm the dismissal of Count III because this Missouri law claim is preempted by federal law. These contentions go to the merits of the underlying dispute. They should be addressed in the first instance by the district court. We therefore decline to consider them at this time.

In Case No. 98-1420, we reverse the judgment of the district court and remand for further proceedings not inconsistent with this opinion. In Case No. 98-2942, Case No. 98-3143, and Case No. 98-3478, we deny the petitions for review.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC, et al.,	)	
Plaintiffs,	)	No. 97-3408-CV-S-RGC
v.	)	
NEW PRICE, INC., d/b/a PRIME, INC., et al.,	)	
Defendants.	)	

ORDER

(Filed Nov. 17, 1997)

Presently before the Court is Defendant's Motion to Dismiss Plaintiffs' Complaint. On August 14, 1997, plaintiffs filed with this Court a Class Action Complaint for Damages and for Declaratory Relief. Thereafter, defendants filed with this Court their Motion to Dismiss. All briefings on the Motion have been completed, and the Motion is ripe for this Court's consideration. For the following reasons, defendants' Motion to Dismiss will be granted.

In passing on a motion to dismiss, a court must view the facts alleged in the complaint in the light most favorable to the plaintiff *Sheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-01, 2 L.Ed.2d 80 (1957); *Toombs v. Bell*, 798 F.2d 297, 298 (8th Cir. 1986). The court should not

grant a motion to dismiss merely because the complaint does not state with precision every element of the offense necessary for recovery. 5 Wright & Miller, *Federal Practice and Procedure:* Civil, § 1216 at 120 (1969). A complaint is sufficient if it contains "allegations from which an inference can be drawn that evidence on these material points will be introduced at trial." *Id.* at 122-23. Moreover, a court should not dismiss unless it "appears beyond a reasonable doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley,* 355 U.S. at 45-46, 78 S.Ct. at 102. Thus, a motion to dismiss is likely to be granted "only in the unusual case in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." *Fusco v. Xerox Corp.,* 676 F.2d 332, 334 (8th Cir. 1982).

A brief statement of the facts as established in the Complaint is necessary before the Court can pass on defendants' Motion. On August 14, 1997, plaintiffs filed with this Court a Class Action Complaint for Declaratory and Injunctive Relief. Plaintiffs are a class of owner-operators who operate motor vehicles in and through the state of Missouri and are, or are likely to be, employed by or otherwise associated with Defendants Prime and/or Success Leasing under the terms set forth in defendants' service contracts and lease-purchase agreements. In general, plaintiffs are seeking to have defendants' business practices declared unlawful and violation of federal motor carrier leasing regulations as administered by the Federal Highway Administration ("FHWA") under the United States Department of Transportation ("DOT") and the Surface Transportation Board ("STB").

The Complaint specifically alleges that owner-operators provided motor vehicle equipment to defendant Prime under the terms of a service contract. These same owner-operators entered into lease-purchase agreements with defendant Success Leasing under which the owner-operators lease from Success Leasing, with the option to purchase, the motor vehicle equipment that is the subject of the service contract between the owner-operators and defendant Prime. The owner-operators allege that defendant Prime has persisted in unjustifiably depriving owner-operators of escrow and other funds deposited with defendant Prime. The owner-operators also allege that the lease-purchase agreement with defendant Success Leasing is so prejudicial and unfair as to be unconscionable. Plaintiff alleges that defendant Success Leasing is a corporation owned by Defendant Prime which is a corporation engaged in the enterprise of providing transportation services to the shipping public under authority granted by the DOT.

Defendants make three arguments in support of their Motion to Dismiss. Defendants maintain that the doctrine of primary jurisdiction requires dismissal of all of plaintiffs' claims. In addition, defendants argue that plaintiffs' Count II should be dismissed because it attempts to apply federal law to an agreement not subject to federal regulation. Finally, defendants argue that plaintiffs' state law claim requesting rescission should be dismissed because it is preempted by federal law. Because defendants' argument concerning primary jurisdiction is dispositive, the Court need not consider defendants' other arguments.

Defendants maintain that the doctrine of primary jurisdiction requires that this Court dismiss plaintiffs'

cause of action. Primary jurisdiction "is a common law doctrine used to coordinate administrative and judicial decision making." *Red Lake Band of Chippewa Indians v. Barlow*, 846 F.2d 474, 476 (8th Cir. 1988). The doctrine applies when the claims presented "contain some issue within the special competence of an administrative agency." *Reiter v. Cooper*, 507 U.S. 258, 268, 113 S.Ct. 1213, 1220, 122 L.Ed.2d 604 (1993). The doctrine is especially appropriate when uniformity of decision making takes on special importance. *United States v. Western Pac. R. Co.*, 352 U.S. 59, 64-65, 77 S.Ct. 161, 165, 1 L.Ed.2d 126 (1956).

Plaintiffs argue that the doctrine of primary jurisdiction does not apply because plaintiffs are granted a private right of action under the law and because the agency's position is clear because the agency has already ruled regarding leasing and rental agreements similar to those present in this case. It is true that "[i]t is inappropriate to invoke the doctrine of primary jurisdiction in a case in which Congress, by statute, has decided that the courts should consider the issue in the first instance." *United States v. McDonnell Douglas Corp.*, 751 F.2d 220, 224 (8th Cir. 1984). However, primary jurisdiction may be invoked when a court and an agency have concurrent jurisdiction to decide a question. *Barlow* 846 F.2d at 476.

Plaintiffs bring their cause of action pursuant to 49 U.S.C. § 14704 which provides for a private right of action by person injured by motor carriers or brokers. However, the Court is not given exclusive jurisdiction under the statute. The allegations raised by plaintiffs in all counts raise complex issues concerning the breadth and applicability of 49 C.F.R. § 376 as relating to whether defendants' lease-purchase agreements and service contracts

are in compliance with and reasonable under the law and whether such lease-purchase agreements and service contracts are even under the authority of the FHWA. The DOT has delegated to the FHWA the responsibility for authority and oversight as granted to the DOT under 49 U.S.C. § 13501, *et seq.*, 49 U.S.C. § 14101, *et seq.*, and 49 U.S.C. § 14701, *et seq.* As a result, the Court continues to share concurrent jurisdiction with FHWA under the DOT. Accordingly, the Court finds that 49 U.S.C. § 14704 does not preclude application of the doctrine of primary jurisdiction.

Plaintiffs also argue that, because the agency's position is clear regarding plaintiffs' claims involving leasing as covered under 49 C.F.R. § 376, the agency's expertise is not necessary. In *United States v. Western Pac. R. Co.*, 352 U.S. 59, 66, 77 S.Ct. 161, 166, 1 L.Ed.2d 126 (1956), the Supreme Court noted that where a "determination of the meaning of a term . . . involves factors the adequate appreciation of which presupposes an acquaintance with the many intricate facts of transportation," the issue of applying the term must go to the agency. To answer the question of whether the service contracts and lease-purchase agreements in the instant case contained terms and information which complied with and are reasonable under federal motor freight carrier leasing regulations presupposes that the decision maker will have intimate knowledge of those regulations and the reasoning behind them. As a result, the FHWA is in a better position than the Court to make such a determination with respect to the questions presented by plaintiffs' Complaint.

Plaintiffs also argue that the FHWA has considered similar matters and, therefore, this Court need not worry

about rendering an inconsistent decision. The doctrine of primary jurisdiction should be applied to achieve "uniformity and consistency in the regulation of a business entrusted to a particular agency." *Nader v. Allegheny Airlines*, 426 U.S. 290, 303-04, 96 S.Ct. 1978, 1986-1989, 48 L.Ed.2d 643 (1976). The Court finds plaintiffs' arguments to be unpersuasive. Plaintiffs assert that the DOT and FHWA have spoken clearly on the issues presented in the matter at hand, however, plaintiffs cite only one decision and that decision is inapposite to plaintiffs' claims for relief. Even if it were true that the agency has decided exactly similar matters in a manner favorable to plaintiffs, the Court believes that the doctrine of primary jurisdiction should properly be invoked to avoid an inconsistent decision with the agency. Accordingly, the Court finds that the FHWA under the DOT is in a better position than the Court to adjudicate the matter currently before the Court and that such adjudication would avoid inconsistent decisions. The Court will, therefore, grant defendants' Motion to Dismiss.

Accordingly, it is

ORDERED that defendants' Motion to Dismiss Plaintiffs' Complaint is GRANTED.

/s/ Russell G. Clark
RUSSELL G. CLARK,
SENIOR JUDGE
UNITED STATES
DISTRICT COURT

Date: November 14, 1997

APPENDIX C

DEPARTMENT OF TRANSPORTATION [4910-22-P]

Federal Highway Administration

PETITION FOR DECLARATORY ORDER REGARDING APPLICATION OF FEDERAL MOTOR CARRIER TRUTH-IN-LEASING REGULATIONS

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of denial of petition for declaratory order.

SUMMARY: The Owner-Operator Independent Drivers Association, Inc. (OOIDA), Howard Jenkins, Marshall Johnson, Susan Johnson and Jerry Vanboetzelaer filed with the FHWA a petition for declaratory order (the OOIDA petition) seeking a formal ruling by the FHWA that New Prime, Inc., dba Prime, Inc. (Prime) and Success Leasing, Inc. (Success) violated certain provisions of the federal motor carrier truth-in-leasing regulations (49 CFR part 376). This petition was filed after the U.S. District Court for the Western District of Missouri dismissed petitioners' class action complaint against Prime and Success, seeking enforcement of these regulations, on the ground that FHWA has primary jurisdiction to determine whether the regulations have been violated.

The FHWA is denying the OOIDA petition because it fails to raise any issues not adequately addressed by existing legal precedent which require the special expertise of this agency. Although denials of petitions for declaratory orders will not ordinarily be published in the Federal Register, the FHWA is publishing this decision to

provide guidance to courts, carriers, owner-operators and other interested parties regarding the agency's general policy in handling such petitions, particularly those involving issues arising under the truth-in-leasing regulations. This policy applies to all petitions for declaratory orders, regardless of whether filed in connection with private litigation.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Falk, Motor Carrier Law Division, Office of the Chief Counsel, (202) 366-1384, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

The OOIDA Petition

On March 5, 1998, OOIDA and four owner-operators filed a petition for declaratory order seeking a ruling from the FHWA that Prime and Success violated the truth-in-leasing regulations. Petitioners initially sought damages and enforcement of these regulations by filing a class action complaint, under 49 U.S.C. § 14704, in the U.S. District Court for the Western District of Missouri. However, the court dismissed the complaint on the ground that the FHWA had primary jurisdiction to resolve the issues in controversy.

According to the OOIDA petition, several owner-operators leased equipment to Prime which they obtained through lease-purchase agreements with success, an equipment leasing company allegedly under common

ownership with Prime. Under the terms of these lease-purchase agreements, Prime deducted rental/purchase payments for the equipment from the owner-operators' compensation and remitted the money to Success. Owner-operators were also required to remit money into several reserve funds maintained by Success to cover the cost of repairs and maintenance of the equipment. Owner-operators who terminated their leases with Prime were not refunded their reserve fund balances.

Petitioners claim that Prime violated 49 C.F.R. § 376.12(i) because its leases failed to specify the terms of any lease-purchase agreement authorizing the carrier to deduct lease purchase payments from lessor compensation. They also allege that the reserve funds maintained by Success are escrow funds within the meaning of 49 C.F.R. § 376.2(f), and that any balances in these funds must be returned to them with interest, within 45 days of termination of their leases, under 49 C.F.R. § 376.12(k).

Petitioners contend that the district court's dismissal of their complaint, potentially with prejudice: (1) conflicts with their right to seek private enforcement by filing a civil action under § 14704; (2) conflicts with congressional intent to eliminate DOT's role in resolving private disputes; and (3) improperly applied the doctrine of primary jurisdiction, which is limited to cases where the reasonableness of a federal regulation is in dispute and an agency's technical expertise is necessary to resolve the issues before the court. Petitioners have appealed the dismissal of their complaint to the Court of Appeals for the Eighth Circuit. Consequently, petitioners request, in the alternative, that the FHWA rule that it [sic] lacks

primary jurisdiction over regulatory issues where a private party has elected to litigate these issues in federal district court under 49 U.S.C. § 14704. Petitioners further contend that FHWA's technical expertise is not needed in this case because the Interstate Commerce Commission (ICC) previously ruled on the applicability of the part 376 escrow provisions to carrier-affiliated equipment leasing companies in *Dart Transit Company – Petition for Declaratory Order,* 9 I.C.C. 2d 700 (1993).

Petitions for Declaratory Orders

Although fairly new to the FHWA, petitions for declaratory orders were a common device for obtaining guidance from the ICC in resolving disputes within that agency's jurisdiction. An agency's authority to issue declaratory orders comes from § 5(d) of the Administrative Procedure Act, 5 U.S.C. § 554(e), which gives agencies "sound discretion" to issue declaratory orders to "terminate a controversy or remove uncertainty". The FHWA intends to exercise this authority much more selectively than the ICC because Congress, in transferring several ICC functions to the Department of Transportation (DOT) through the ICC Termination Act of 1995 (ICCTA), envisioned that DOT would generally not become involved in resolving disputes between private parties.

The ICCTA expanded the rights and remedies of persons injured by carriers by providing for private enforcement of its provisions in court. Under 49 U.S.C. § 14704, an injured party may seek both damages and injunctive relief against a motor carrier in federal district

court to redress violations of part 376. In discussing this provision, the House Transportation and Infrastructure Committee stated that DOT should not allocate its scarce resources to resolving essentially private disputes, and that the right of private enforcement "will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved – by the parties". H. Rep. No. 104-311, pp. 87-88.

The FHWA believes that issuing declaratory orders, except in extraordinary circumstances, would undermine the Congressional intent to keep DOT out of private commercial disputes, particularly where one of the parties has filed suit in federal court under § 14704. Accordingly, although the FHWA reserves the right to issue declaratory orders to resolve controversies between third parties in appropriate circumstances, it will generally do so only in cases having industry-wide significance that raise issues not adequately addressed by existing legal precedent.

Primary Jurisdiction

The doctrine of primary jurisdiction is "a doctrine specifically applicable to claims properly cognizable in court that contain some issue within the special competence of an administrative agency." *Reiter v. Cooper,* 507 U.S. 258 (1993), at 268. In contrast to the doctrine of exhaustion of administrative remedies, it does not require parties to seek relief from the agency before invoking the jurisdiction of the court. The court, when faced with an issue it believes requires the special expertise of an agency, has equitable discretion to give that agency the

first opportunity to pass on the issue by staying further proceedings and giving the parties a reasonable opportunity to seek an administrative ruling. However, an agency is not required to rule on issues directly referred to it by a court or, as in this case, indirectly referred to it following a court's order of dismissal. If an agency declines to issue a ruling, the court must then resolve the issues without the benefit of the agency's views. See *Atchison, Topeka & S.F. Ry. Co. v. Aircoach Transp. Ass'n, 253 F.2d 877 (D.C. Cir., 1958).*

Although the FHWA does not agree with petitioners' contention that the doctrine of primary jurisdiction applies only to issues involving the reasonableness of a federal regulation, it does agree that special expertise is generally not needed to resolve disputes regarding the part 376 truth-in-leasing regulations. These regulations contain specific, straightforward, non-technical requirements which a court is ordinarily competent to construe. Consistent with the Congressional intent underlying 49 U.S.C. § 14704, the FHWA will generally decline in exercise its primary jurisdiction with regard to court referrals involving violations of part 376.

Conclusion

The OOIDA petition does not raise issues which require special expertise by the FHWA. The question is of whether Prime's leases contain the necessary terms required by § 376.12(i), or whether escrow funds were returned within 45 days of lease termination, are fairly straightforward matters clearly within the competence of a court to resolve. Although part 376 does not expressly

apply to carrier-affiliated equipment leasing companies, the ICC fully addressed the applicability of the regulations to such entities in the *Dart* decision. The FHWA sees no reason to revisit this issue. Accordingly, OOIDA's petition for declaratory order is denied.

In Washington, District of Columbia, this 29th day of May, 1998.

/s/ Gloria J. Jeff
Kenneth R. Wykle
Administrator

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 98-142OWMS

Owner-Operator Independent Drivers Association, Inc. et al.,	*	Order Denying Petition for Rehearing and for Rehearing En Banc
Appellants,	*	
v.	*	
New Prime, Inc. doing business as Prime, Inc., Success Leasing, Inc.,	*	
Appellees.	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

October 13, 1999

Order Entered at the Direction of the Court:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals,
Eighth Circuit

APPENDIX E

49 U.S.C.

§ 14701. General authority

(a) Investigations. – The Secretary of the Board, as applicable, may begin an investigation under this part on the Secretary's or the Board's own initiative or on complaint. If the Secretary or Board, as applicable, finds that a carrier or broker is violating this part, the Secretary or Board, as applicable, shall take appropriate action to compel compliance with this part. If the Secretary finds that a foreign motor carrier or foreign motor private carrier is violating chapter 139, the Secretary shall take appropriate action to compel compliance with that chapter. The Secretary or Board, as applicable, may take action under this subsection only after giving the carrier or broker notice of the investigation and an opportunity for a proceeding.

(b) Complaints. – A person, including a governmental authority, may file with the Secretary or Board, as applicable, a complaint about a violation of this part by a carrier providing, or broker for, transportation or service subject to jurisdiction under this part or a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title. The complaint must state the facts that are the subject of the violation. The Secretary or Board, as applicable, may dismiss a complaint that it determines does not state reasonable grounds for investigation and action.

(c) Deadline. – A formal investigative proceeding begun by the Secretary or Board under subsection (a) of

this section is dismissed automatically unless it is concluded with administrative finality by the end of the 3d year after the date on which it was begun.

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§ 14702. Enforcement by the regulatory authority

(a) In general. – The Secretary or the Board, as applicable may bring a civil action –

(1) to enforce section 14103 of this title; or

(2) to enforce this part, or a regulation or order of the Secretary or Board, as applicable, when violated by a carrier or broker providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 of this title or by a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title.

(b) Venue. – In a civil action under subsection (a)(2) of this section –

(1) trial is in the judicial district in which the carrier, foreign motor carrier, foreign motor private carrier, or broker operates;

(2) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(3) a person participating with a carrier or broker in a violation may be joined in the civil action without regard to the residence of the person.

(c) Standing. – The Board, through its own attorneys, may bring or participate in any civil action involving motor carrier undercharges.

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§ 14703. Enforcement by the Attorney General

The Attorney General may, and on request of either the Secretary or the Board shall, bring court proceedings –

(1) to enforce this part or a regulation or order of the Secretary or Board or terms of registration under this part; and

(2) to prosecute a person violating this part or a regulation or order of the Secretary or Board or term of registration under this part.

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§ 14704. Rights and remedies of persons injured by carriers or brokers

(a) In general. –

(1) Enforcement of order. – A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a

civil action for injunctive relief for violations of sections 14102 and 14103.

(2) Damages for violations. – A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

(b) Liability and damages for exceeding tariff rate. – A carrier providing transportation or service subject to jurisdiction under chapter 135 is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

(c) Election. –

(1) Complaint to DOT or Board; civil action. – A person may file a complaint with the Board or the Secretary, as applicable, under section 1470(b) or bring a civil action under subsection (b) to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under chapter 135.

(2) Order of DOT or Board. –

(A) In general. – When the Board or Secretary, as applicable, makes an award under subsection (b) of this section, the Board or Secretary, as applicable, shall order the carrier to pay the amount awarded by a specific date. The Board or Secretary, as applicable, may order a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 to pay

damages only when the proceeding is on complaint.

(B) Enforcement by civil action. – The person for whose benefit an order of the Board or Secretary requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier or broker does not pay the amount awarded by the date payment was ordered to be made.

(d) Procedure. –

(1) In general. – When a person begins a civil action under subsection (b) of this section to enforce an order of the Board or Secretary requiring the payment of damages by a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title, the text of the order of the Board or Secretary must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board or Secretary are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier or broker is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) Parties. – All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(e) Attorney's fees. – The district court shall award a reasonable attorney's fee under this section. The district court shall tax and collect that fee as part of the costs of the action.

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§ 14705. Limitation on actions by and against carriers

(a) In general. – A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

(b) Overcharges. – A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing

transportation subject to jurisdiction under chapter 135 and an election to file a complaint with the Board or Secretary, as applicable, is made under section 14704(c)(1), the complaint must be filed within 3 years after the claim accrues.

(c) Damages. – A person must file a complaint with the Board or Secretary, as applicable, to recover damages under section 14704(b) within 2 years after the claim accrues.

(d) Extensions. – The limitation periods under subsection (b) of this section are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsection (b) and (c) of this section are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) Payment. – A person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order.

(f) Government transportation. – This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the later of the date of –

(1) payment of the rate for the transportation or service involved;

(2) subsequent refund for overpayment of that rate; or

(3) deduction made under section 3726 of title 31.

(g) **Accrual date.** – A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

APPENDIX F

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March 5, 1998

VIA HAND DELIVERY

Kenneth R. Wykle, Administrator
Federal Highway Administration
400 Seventh Street, SW, Room 4218
Washington, D.C. 20590

Re: Petition to Federal Highway Administration for Declaratory Order Regarding Application of Federal Motor Carrier Truth-in-Leasing Regulations

Dear Mr. Wykle:

Please find enclosed herewith the Petition entitled *Owner-Operator Independent Drivers Association, Inc., Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vandoetzelaer: PETITION FOR DECLARATORY ORDER REGARDING APPLICATION OF FEDERAL MOTOR CARRIER TRUTH-IN-LEASING REGULATIONS* (the "Petition").

Submission of this Petition follows upon a recent ruling by the United States District Court for the Western

District of Missouri in a Federal class action styled as *Owner-Operator Independent Drivers Association, Inc., Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vandoetzelaer, on Behalf of Themselves and All Others Similarly Situated v. New Prime, Inc., d/b/a Prime, Inc., and Success Leasing, Inc.*, Case No. 97-3408-CV-S-RGC (W.D. Mo. 1997) (the "*Prime* Lawsuit), the Honorable Russell G. Clark presiding. In the District Court proceeding, the *Prime* plaintiffs challenge the lawfulness of the defendants' lease agreements and equipment rental-purchase contracts as applied to the class members, maintaining, *inter alia*, that those agreements contain terms that unlawfully require the class members to forfeit, and unlawfully permit defendants to possess and retain, escrow and other funds in direct violation of Federal commercial transportation laws and regulations as set forth under the United States Code and the Code of Federal Regulations. *See generally* 49 U.S.C. §§ 13301, 13501, 14102, and 14704; 49 C.F.R. §§ 376.12(i) and (k).

On November 17, 1997, the Missouri District Court granted the *Prime* defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6). In its decision, the Court invoked the doctrine of primary jurisdiction in support of the proposition that the claims in the *Prime* Lawsuit would more appropriately be presented to and decided by the Department of Transportation (the "DOT"), and its agency, the Federal Highway Administration (the "FHWA"). For your reference, we have enclosed copies of the complaint in the *Prime* Lawsuit, the Court's decision granting defendants' FRCP 12(b)(6) motion, and the *Prime* plaintiffs' motion for

reconsideration of the Court's decision (denied December 30, 1997).

Petitioners herein (plaintiffs in the *Prime* Lawsuit) maintain that the District Court's reliance on the primary jurisdiction doctrine in dismissing the *Prime* complaint is insupportable. As the *Prime* plaintiffs argued in their motion for reconsideration, the doctrine of primary jurisdiction should not apply in the *Prime* Lawsuit because, *inter alia*, (1) under the ICC Termination Act of 1995 (P.L. 104-88), plaintiff parties are granted a private right of action through which to seek redress for violations of the Federal motor carrier leasing regulations (49 U.S.C. § 14704); (2) the Congress and the DOT both have explicitly directed and acknowledged that, pursuant to the ICC Termination Act, persons may elect to bring civil actions to enforce the Federal leasing regulations, and that the DOT should not attempt to resolve private-party disputes involving those regulations (*see ICC Termination Act of 1995: Report of the Committee on Transportation and Infrastructure on H.R. 2539, House of Representatives*, 104th Cong., H.R. Rep. No. 104-311 (November 6, 1995); U. S. Dept. of Transportation, *Report on the Functions of the Interstate Commerce Commission* (July 1995)); (3) the doctrine of primary jurisdiction applies only where a party challenges the reasonableness of a Federal regulation, not where a party alleges a violation of a Federal regulation (*see Nader v. Allegheny Airlines, Inc.*, 426 U.S. 290 (1976); *Civil Aeronautics Board v. Modern Air Transport, Inc.*, 197 F.2d 622 (2d Cir. 1950)); and (4) the technical expertise and guidance of the DOT and the FHWA are not needed in the *Prime* case because the DOT (*i.e.*, the former Interstate Commerce Commission ("ICC")), already has made

the determinations regarding the applicability of the Federal motor carrier leasing regulations' escrow provisions (49 C.F.R. § 376 *et seq.*) requisite to guiding Federal Court rulings on such matters. *See generally* OPA Information Bulletin No. 93-103, No. MC-C-30192, *Dart Transit Company – Petition for Declaratory Order,* 9 I.C.C.2d 700 (June 28, 1993).

What is especially puzzling about the Missouri Court's ruling is that, despite its professed need for agency guidance, the Court failed to refer the *Prime* plaintiffs' claims to the DOT and/or the FHWA (in fact, the Court neglected even to indicate whether its dismissal was with or without prejudice). As the United States Supreme Court has held, the proper procedure for the District Court in those instances where the primary jurisdiction doctrine does apply is to refer any specific matters requiring technical expertise or guidance to the appropriate agency, and to stay litigation proceedings pending the agency's conclusions. *See Reiter, et al. v. Cooper, et al.,* 507 U.S. 258 (1993).

The *Prime* plaintiffs have appealed the Western District's dismissal ruling to the Eighth Circuit Court of Appeals. Pending that appeal, however, Petitioners herein have determined it prudent, and in the interests of justice, to submit the present Petition to the FHWA. This petition does not seek the FHWA's adjudication of the legal and factual issues raised in the District Court litigation. We do, however, ask the agency to exercise whatever authority it considers itself to have to provide the District Court with technical expertise or guidance on the issues identified in the Petition.

It is worth noting the OOIDA, its members, and others interested in the plight of owner-operators are involved in a host of other leasing regulation cases, both current and pending. *See, e.g., Owner-Operator Independent Drivers Association, Inc., Carl Harp, Garvin Keith Roberts, and Michael Wiese, on Behalf of Themselves and All Others Similarly Situated v. Arctic Express, Inc., and D&A Associates, Ltd.*, Case No. C2-97-750 (S.D. Ohio 1997); *Owner-Operator Independent Drivers Association, Inc., and Shawn Lewis, Individually and on Behalf of All Others Similarly Situated v. Caliber System, Inc., and its subsidiary, Caliber Logistics Inc.* (formerly Roadway Logistics Systems, Case No. 5:97-CV-2242 (N.D. Ohio 1997); *Padrta, et al. v. Ledar Transport, Inc.*, Case No. 96-0324-CV-W-2 (W.D. Mo. 1996). In fact, OOIDA has on its agenda literally dozens of cases, on behalf of its members, suitable for class action litigation under the Federal motor carrier statutes and regulations.

Like the *Prime* Lawsuit, each of these cases has been or will be brought under the private right of action afforded plaintiffs under the ICC Termination Act, and each is based on allegations of violations of the Federal motor carrier truth-in-leasing regulations. Clearly, if the issues involving the appropriateness of casting leasing regulation claims as civil suits (what the Missouri Western District erroneously has determined to be a matter of "primary jurisdiction") are not resolved at this juncture, the FHWA inevitably will be confronted with a landslide of requests for intervention by plaintiffs who have been denied access to the Federal courts and left in procedural

limbo – resulting ultimately in the enormous administrative burdenson the DOT that the ICC Termination Act was intended to prevent.

We would be happy to provide you with any additional information or documentation you might require in your consideration of this matter. Moreover, we would be delighted to meet with you or other interested FHWA personnel to discuss these important issues in person.

Sincerely,

/s/ Paul D. Cullen, Sr.
PAUL D. CULLEN, SR.
GREGORY M. CORK
CULLEN & O'CONNELL

PDC/GMC/
Enclosures

bcc: James J. Johnston, President, OOIDA
Thomas A. Sheehan, Shook, Hardy & Bacon, LLP
Mike Faulk, FHWA

BEFORE THE
UNITED STATES DEPARTMENT
OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C.

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., HOWARD JENKINS, MARSHALL JOHNSON, SUSAN JOHNSON, and JERRY VANBOETZELAER, **Petitioners.**	**Docket No. _____**

PETITION FOR DECLARATORY ORDER REGARDING APPLICATION OF FEDERAL MOTOR CARRIER TRUTH-IN-LEASING REGULATIONS

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., HOWARD JENKINS, MARSHALL JOHNSON, SUSAN JOHNSON, and JERRY VANBOETZELAER

Petitioners

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Counsel for Petitioners

BEFORE THE
UNITED STATES DEPARTMENT
OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C.

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., HOWARD JENKINS, MARSHALL JOHNSON, SUSAN JOHNSON, and JERRY VANBOETZELAER, Petitioners.	Docket No. _____

PETITION FOR DECLARATORY ORDER REGARDING APPLICATION OF FEDERAL MOTOR CARRIER TRUTH-IN-LEASING REGULATIONS

The Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer (collectively, "Petitioners"), by their counsel, hereby submit their Petition for Declaratory Order Regarding Application of the Federal Motor Carrier Truth-in-Leasing Regulations (the "Petition").

Summary of Petition and Requested Relief

Petitioners are independent truck owner-operators[1] who have (1) contracted for the rental of trucking equipment from the affiliate of an authorized motor carrier, and (2) used that rented equipment in service to the authorized motor carrier under the terms of a Federally regulated lease agreement. Petitioners assert that the lease-purchase scheme perpetrated by the authorized carrier and its affiliated equipment rental company violates Federal motor carrier leasing regulations (49 C.F.R. § 376.12) by unlawfully requiring Petitioners to forfeit, and unlawfully permitting the motor carrier to possess and retain, escrow and other funds to which only Petitioners are entitled.

Case History and Procedural Background

On August 14, 1997, Petitioners herein filed and served a Class Action Complaint in the United States District Court for the Western District of Missouri, styled as *Owner-Operator Independent Drivers Association, Inc., Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry*

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[1] Each of the named individual Petitioners is an independent truck owner-operator. OOIDA is an international business association founded in 1973 to represent the interests of owner-operators. OOIDA's standing as a representative of owner-operators has been acknowledged and approved in numerous matters before the Federal Courts. *See, e.g., Owner-Operator Independent Drivers Assoc., et al. v. Keith Bissell et al.*, Nos. 94-6178/6179 (*per curiam*, 6th Cir., August 21, 1997) ("the district court correctly concluded that OOIDA has standing to litigate this action as a representative of its members").

Vandbetzelaer, on Behalf of Themselves and All Others Similarly Situated v. New Prime, Inc., d/b/a Prime, Inc., and Success Leasing, Inc., Case No. 97-3408-CV-S-RGC (W.D. Mo. 1997), the Honorable Russell G. Clark presiding (the *Prime* Lawsuit"). (A copy of the *Prime* complaint is attached hereto as **Exhibit A**.) The *Prime* plaintiffs have challenged the lawfulness of the defendants' lease agreements and equipment rental-purchase contracts as applied to the class members, maintaining, *inter alia*, that those agreements contain terms that unlawfully require the class members to forfeit, and unlawfully permit defendants to possess and retain, escrow and other funds in direct violation of Federal commercial transportation laws and regulations as set forth under the United States Code and the Code of Federal Regulations. *See generally* 49 U.S.C. §§ 13301, 13501, 14102, and 14704; 49 C.F.R. §§ 376.12(i) and (k).

On October 1, 1997, defendants in the *Prime* Lawsuit filed a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), arguing that "primary jurisdiction" over the *Prime* plaintiffs' claims rests with the Department of Transportation (the "DOT"), and its agency, the Federal Highway Administration (the "FHWA"). (A copy of the *Prime* defendants' 12(b)(6) motion is attached hereto as **Exhibit B**.) Notwithstanding the *Prime* plaintiffs' well-supported opposition to defendants' motion (a copy of which is attached hereto as **Exhibit C**), the Western District of Missouri granted the *Prime* defendants' motion to dismiss on November 17, 1997, invoking the doctrine of primary jurisdiction in professed support of the proposition that the claims in the *Prime* Lawsuit are more appropriately presented to

and decided by the DOT and the FHWA. (A copy of the District Court's dismissal order is attached hereto as **Exhibit D.**) Specifically, the Court stated that "the FHWA under the DOT is in a better position than the Court to adjudicate the matter currently before the Court." *See* dismissal order at p. 5.

Subsequently, the *Prime* plaintiffs filed a motion for the Court's reconsideration of its ruling. In their reconsideration motion (a copy of which is attached hereto as **Exhibit E**), the *Prime* plaintiffs argued that the doctrine of primary jurisdiction does not apply in the *Prime* Lawsuit because, *inter alia*, (1) under the ICC Termination Act, plaintiff parties are granted a private right of action through which to seek redress for violations of the Federal motor carrier leasing regulations (49 U.S.C. § 14704); (2) the Congress and the DOT both have explicitly directed and acknowledged that, pursuant to the ICC Termination Act, persons may elect to bring civil actions to enforce the Federal leasing regulations, and that the DOT should not attempt to resolve private-party disputes involving those regulations (*see ICC Termination Act of 1995: Report of the Committee on Transportation and Infrastructure on H.R. 2539, House of Representatives,* 104th Cong., H.R. Rep. No. 104-311 (November 6, 1995), at 87-88, 120-121; U.S. Dept. of Transportation, *Report on the Functions of the Interstate Commerce Commission* (July 1995), at 86); (3) the doctrine of primary jurisdiction applies only where a party challenges the reasonableness of a Federal regulation, not where a party alleges a violation of a Federal regulation (*see Nader v. Allegheny Airlines, Inc.*, 426 U.S. 290, 305-306 (1976), *Civil Aeronautics Board v. Modern Air Transport, Inc.*, 197 F.2d 622, 624-625

(2d Cir. 1950)); and (4) the technical expertise and guidance of the DOT and the FHWA are not needed in the *Prime* case because the DOT (*i.e.*, the former Interstate Commerce Commission ("ICC")), already has made the determinations regarding the applicability of the Federal motor carrier leasing regulations' escrow provisions (49 C.F.R. § 376 *et seq.*) requisite to guiding Federal Court rulings on such matters. *See generally* OPA Information Bulletin No. 93-103, No. MC-C-30192. *Dart Transit Company – Petition for Declaratory Order,* 9 I.C.C.2d 700 (June 28, 1993).

The Missouri Western District Court denied the *Prime* plaintiffs' motion for reconsideration on December 30, 1997. The *Prime* plaintiffs noticed their appeal of the Western District's ruling on January 17, 1998. (A copy of the notice of appeal is attached hereto as **Exhibit F.**) That appeal is now pending before the Eighth Circuit Court of Appeals.

Request for Declaratory Order

Despite its professed need for agency guidance, the Missouri Western District Court failed to refer the *Prime* plaintiffs' claims to the FHWA. Nevertheless, Petitioners herein presume that the Court intended that the *Prime* plaintiffs should seek guidance from the FHWA on the issues implicated in the *Prime* Lawsuit.[2]

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[2] *See Reiter, et al. v. Cooper, et al.*, 507 U.S. 258, 268 (1993) (in instances where the primary jurisdiction doctrine is determined to be applicable, the proper procedure for the District Court is to refer any specific matters requiring technical expertise or

Accordingly, Petitioners seek an order from the FHWA declaring that:

(1) under the Federal motor carrier leasing regulations and controlling decisional precedent, a Federally regulated lease agreement between an authorized motor carrier lessee and an operator-lessor must specify the terms of a separate, independent equipment purchase or rental contract between the operator-lessor and a third party affiliated with the carrier lessee, which does not directly give the carrier lessee the right to make deductions from the operator-lessor's compensation for purchase or rental payments;

(2) under the Federal motor carrier leasing regulations and controlling decisional precedent, a Federally authorized motor carrier lessee must treat money remitted to an affiliated third party's equipment maintenance reserve fund as the carrier's own escrow fund; and

(3) under the Federal motor carrier leasing regulations and controlling decisional precedent, a Federally authorized motor carrier lessee is required to return money remitted to an affiliated third party's equipment maintenance reserve fund to the operator-lessor, with interest, within 45 days of the termination of a lease.

In the alternative, should the FHWA determine that this matter should not be decided by it, Petitioners request that the FHWA declare that applicable law does not confer upon the FHWA primary jurisdiction over regulatory issues in private commercial Federal Court

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guidance to the appropriate agency, and to stay litigation proceedings pending the agency's conclusions).

litigation arising under 49 U.S.C. §§ 14704, and that such matters should be resolved by the Federal Courts pursuant to the ICC Termination Act of 1995 (P.L. 104-88).

Respectfully submitted,

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., HOWARD JENKINS, MARSHALL JOHNSON, SUSAN JOHNSON, and JERRY VANBOETZELAER

Petitioners

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APPENDIX G

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TOBIAS RENTERIA, Plaintiff, v. K&R TRANSPORTATION, INC., et al., Defendants.	CASE NO. CV 98-290 MRP MEMORANDUM OF DECISION (and related case numbers 98-356, 98-357, 98-358, 98-359, 98-362, 98-392, 98-393, 98-394, 98-395, 98-396, 98-397, 98-398, 98-399, 98-400, 98-401, 98-406, 98-413, 98-417, 98-426, 98-427, 98-430, 98-435, 98-490, 98-504, 98-505, 98-506) (Filed Febr. 23, 1999)

BACKGROUND

These cases are brought by individual owner-operators of trucks against various trucking companies alleging that monies due them under leasing agreements with the companies have been unlawfully withheld.[1] A complaint taken as typical alleges seven state and common law claims and one claim under the federal Interstate Commerce Commission Termination Act of 1995 ("ICCTA"). The basis of each of these claims is that the leasing

[1] In each of the cases, the owner-operator leases his or her vehicle to the defendant company under a form agreement.

agreements between the owner-operators and the trucking companies violate not only the ICCTA and the Truth-in-Leasing Regulations, found at 49 C.F.R. § 376.12, but also various state laws.

Plaintiffs' state and common law claims allege breach of fiduciary duty, misrepresentation, violation of state insurance and business practices laws, deceit, illegal conversion, and failure to pay the reasonable value of services. These claims are based on state laws controlling wages, insurance, workers' compensation, and business practices governing the reporting of earnings.

The Court requested that the parties brief two issues in this case. First, whether plaintiffs' state and common law claims, outlined above, are preempted by the ICCTA, 49 U.S.C. §§ 13101, et seq. Second, whether plaintiffs have a private cause of action for damages under the ICCTA without first obtaining an order from the appropriate administrative agency.

ANALYSIS

I. Preemption of State and Common Law Claims

Defendants contend that the plain meaning of the ICCTA's preemption clause, the intent of Congress, and the Supreme Court's "broad interpretation" of analogous preemption clauses compel a conclusion that these state law claims are preempted.

The Supreme Court has recognized three types of preemption: conflict preemption, field preemption, and express preemption. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). Conflict preemption is present

"when compliance with both state and federal law is impossible," or when "the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Freightliner Corp. v. Myrick* 514 U.S. 280, 287 (1995). Field preemption exists when federal law so thoroughly occupies a legislative field "as to make reasonable the inference that Congress left no room for the State to supplement it." *Fidelity Fed. Sav. & Loan Ass'n. v. de la Cuesta,* 455 U.S. 141, 153 (1982) (citation omitted). Finally, there is express preemption when Congress explicitly states its intent to displace state law. *See Cipollone,* 505 U.S. at 516.

The presumption is that Congress does not intend to supplant state law. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers, Ins. Co.,* 514 U.S. 645 (1995). To overcome the presumption that state laws dealing with matters traditionally within a state's police powers are not preempted, Congress's intent to preempt must be clear. *Californians for Safe and Competitive Dump Truck Transportation v. Mendonca* 152 F.3d 1184, 1186 (9th Cir. 1998). In addressing preemption claims, "the purpose of Congress is the ultimate touchstone." *Ingersoll-Rand Co. v. McClendon* 498 U.S. 133 (1990). Because preemption claims turn on Congress's intent, an analysis of the text of the provision in question is the starting point of the inquiry.

a. The ICCTA

Plaintiffs' federal claim arises under the ICCTA, 49 U.S.C. §§ 13101, et seq., and the Truth-in-Leasing Regulations, found at 49 C.F.R. § 376.12. Congress enacted an express preemption provision at § 14501 of the ICCTA.

i. Text of the preemption provision

Enacted in the Federal Aviation Administration Act of 1994 ("FAAA"), section 14501 provides that no state may enact or enforce a law "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." 49 U.S.C. § 14501 (c).[2]

Congress included in the section a non-exhaustive list of state laws which are not preempted. *See* § 14501 (c)(2). This section states that the preemption provision shall not restrict "the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization." This provision makes clear that Congress has not so thoroughly occupied this legislative field as to preclude the states from supplementing it. There is no field preemption here.

ii. Legislative History

In attempting to interpret the "relate to" preemption language, the Supreme Court stated that it must go beyond the text and look to the objectives of the statute as a guide to the scope of the state law that Congress intended should survive. *Travelers, Inc. Co.,* at 656.

In passing the ICCTA, Congress indicated that across-the-board deregulation was necessary to eliminate

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[2] Section 14501 was originally enacted in the FAAA Act at 49 U.S.C. § 11501, but was repealed by the ICCTA. The ICCTA recodified the preemption provision as new section 14501. The language of the reenacted provision is identical to the original.

non-uniform state regulations of motor carriers which had caused "significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology, and curtailed the expansion of markets. *Mendonca* at 152 F.3d 1187 (*citing* H.R. Conf. Rep. No. 103-677, at 86-88 (1994), 1994 U.S.C.C.A.N. 1715, 1758-60. Congress explained that the typical forms of state regulation that were of concern "include entry controls, tariff filing and price regulations, and types of commodities carried." *Id.* at 86-87, 1994 U.S.C.C.A.N. at 1758-59.

The section listing non-exempted areas is intended to "emphasize[ ] that State authority to regulate safety, financial fitness and insurance . . . is unchanged since State regulation in those areas is not a price, route or service, and thus, is unaffected." *Id.* at 85, 1994 U.S.C.C.A.N. at 1757.

b. Recent Supreme Court Cases on Preemption

In several recent cases, the Supreme Court has analyzed the scope of preemption clauses. In *Travelers Ins.*, the Court held that traditional state regulations having no more than an indirect effect on ERISA plans were not "related to" such plans within the meaning of the preemption clause. *Travelers, Inc.*, 514 U.S. at 662. The Court did, however, recognize that a state law might produce "acute, albeit indirect, economic effects" such that a state law might [sic] preempted. *Id.* at 668.

More recently, in *California Div. of Labor Standards Enforcement v. Dillingham Construction* 519 U.S. 316 (1997), a unanimous Court held that California's prevailing wage

law was not preempted by ERISA. The Court stated that a law 'relates to' an ERISA plan "if it [1] has a connection with or [2] reference to such a plan." *Id.* at 324. The state law at issue in *Dillingham* did not refer to ERISA and the state laws in the present case do not refer to the ICCTA. Thus, the issue is whether the state laws in the present case have a connection to the ICCTA such that preemption is required.

To determine whether a state law has the "forbidden connection", the Court in *Dillingham* looked to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive, as well as to the nature of the effect of the state law on ERISA plans. While acknowledging that the prevailing wage law may increase costs for ERISA plans, the court held that it "could not hold preempted a state law in an area of traditional state regulation based on so tenuous a relation." *Id.* at 334. The Court stated that preemption of traditional state-regulated areas such as wages where ERISA has not directly spoken to the subject would be "unsettling." *Id.*

c. Ninth Circuit Law

Applying the approach laid out by the Supreme Court, the Ninth Circuit recently held that the FAAA did not preempt California's prevailing wage law. *Mendonca* 152 F.3d 1184 (9th Cir. 1998). While it was argued that the state law increased prices by 25%, caused companies to utilize independent owner-operators, and compelled companies to re-route and re-direct equipment to compensate for lost revenue, the court found that the state

law's effect on prices and services was no more than indirect, remote, and tenuous. *Id.* at 1189. The court held that the state law did not frustrate the purpose of deregulation by acutely interfering with the forces of competition. *Id.*

d. Preemption of State Laws in Present Case

Under the above analysis, any state or common law claim that conflicts with defendants' ability to comply with federal law or stands as an obstacle to the accomplishment of the purpose of the federal law is preempted. In addition, any state law that "relates to" the price, route, or service of a motor carrier is expressly preempted under the ICCTA.

The main purpose of the truth-in-leasing provisions of the ICCTA is to "ensure truth-in-leasing by fostering disclosure." *Tousely v. North American Van Lines, Inc.*, 752 F.2d 96, 101 (4th Cir. 1985). As stated above, the goal of the ICCTA itself is to deregulate the motor carrier industry to eliminate inefficiency and promote competition.

1. Implied Preemption

Defendants assert that because state law seeks to bar motor carriers from allocating the ultimate liability for insurance to owner-operators, which the leasing regulations allow, there is a conflict requiring preemption. Further, defendants argue that the state law requiring licensing as a condition to brokering insurance conflicts with the leasing regulations.

The leasing regulations mandate that in the event that an owner-operator is obligated to pay for insurance required to be maintained by the carrier, the contract must make that fact clear to the owner-operator. *See* 49 C.F.R. § 375.12 (j)(1) ("If the authorized carrier will make a charge back to the leasor for any of this insurance, the lease shall specify the amount."). The aim of the regulations is to compel disclosure of the contract terms between the owner-operator and the carriers, not to govern the terms for which the parties are permitted to bargain. Nothing in the federal regulations prevents a state from passing legislation that mandates a particular contract term with regard to the costs of insurance. Similarly, while separate licensing requirements in each state may impact carriers in some way, the brokering of insurance is not the focus of the federal law.

Finally, defendants have not demonstrated that state laws prohibiting misrepresentation, deceit, and similar activities are either in actual conflict with the leasing regulations or an obstacle to the accomplishment of the purpose of the regulations. *See Mendonca* at 1189. For these reasons, a finding of implied preemption is unwarranted.

ii. Express Preemption.

Defendants also argue that plaintiffs' state and common law claims are expressly preempted by the ICCTA's preemption provision. The provision precludes a state from enacting or enforcing any law that "relate[s] to a price, route, or service of any motor carrier." 49 U.S.C. § 21501 (c).

The effects of the state insurance, wage, and workers' compensation laws on defendants are similar to the incidental increase on costs caused by the prevailing wage law at issue in *Dillingham* and *Mendonca*, held insufficient to "relate to" prices by the Supreme Court and Ninth Circuit. Additionally, insurance and wage requirements are areas generally reserved to the states. *See Mendonca*; 49 U.S.C. § 14501 (c)(2).

Defendants have not shown that the state laws prohibiting misrepresentation, deceit, illegal conversion, or failure to pay the reasonable value of plaintiffs' services, or laws governing reporting and payment of plaintiffs' earnings, have a sufficient relation to a price, route, or service to require preemption under the ICCTA provision. Plaintiffs' claims are not expressly preempted.[3]

II. Private Cause of Action for Damages Under the ICCTA

The second issue briefed by the parties is whether the ICCTA provides for a private cause of action for damages. Plaintiffs claim that the statute provides for an action for damages. Defendants argue that actions for damages are only available to an enforce agency order or to challenge a charge that exceeds the applicable tariff rate, neither of which is involved here. Both parties agree that an action can be brought for injunctive relief.

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[3] Plaintiffs argue that the McCarran-Ferguson Act prohibits a finding that the insurance laws are preempted. As the Court finds no preemption on another basis, this argument need not be reached.

a. The Text of the Act

"The starting point in statutory interpretation is the language (of the statute) itself," *United States v. James*, 478 U.S.C. § 14704. Section 14704 (a)(1) authorizes civil actions to enforce an order of the Secretary or the Board or an action for injunctive relief. Section 14704 (c)(1) then specifically creates a cause of action for damages against a carrier for charges exceeding the applicable tariff rate. Defendants argue that Congress's authorization of these specific types of actions indicated that other causes of action for damages are not allowed under the Act.

Plaintiffs point to § 14704 (a)(2), which states that a "carrier or broker providing transportation or service subject to jurisdiction . . . is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part," as support for their assertion that they have a cause of action. However, nothing in this section authorizes a cause of action for damages in district court. The provision simply affirms carrier liability for damages, without specifying how an injured person may pursue those damages.

b. Federal Case law

This issue has not been addressed in the Ninth Circuit. A Missouri district court, looking at identical provision governing rail carriers, held that the governing board has exclusive jurisdiction to consider a private cause of action for damages, and that a district court can only hear such an action after the Board had issued an order. See *DeBruce Grain, Inc. v. Union Pacific Railroad Co.*, 983 F.Supp. 1280 (W.D. Mo. 1997).

The court in *DeBruce* put emphasis on the structure of the applicable statutes of limitations. The Act provides for a limitation period for civil actions to recover overcharges and for civil actions to enforce an order from the Board. *See* 49 U.S.C. §§ 11705, 14705. There is no provision governing the filing of a civil action for any other types of damages. If other actions for damages were allowed, plaintiffs would appear to have no limitations period, a result the *DeBruce* court dismissed as "absurd." *Id.* at 1284. This suggests Congress did not intend to permit civil actions for damages for violations of regulations.

Similarly, a Texas district court held that under the civil enforcement provision governing rail carriers "'a person may file suit in federal court only to enforce an order of the Board, to recover overcharges or to recover under a bill of lading." *City of Larado v. Texas Mexican Railway Co.*, 935 F.Supp. 895, 898 (S.D. Tex. 1996). The rail carrier provision is virtually identical to that governing motor carriers. *See* 49 U.S.C. §§ 11704, 14704.

c. Legislative History

The legislative history regarding the availability of a private cause of action for damages under the Act is ambiguous.

Plaintiffs rely heavily on statements in the House Report on the passage of the ICCTA. The report states that the "bill provides that private parties may bring actions in court to enforce the provisions of the Motor Carrier Act." House Report No. 104-311, p. 87-88. U.S.C.C.A.N., 799-800.

However, the same House Report then summarizes section 14704 as "provid[ing] that an injured person may bring a civil action to enforce an order of the Secretary or the Panel under this part. This section also provides that complaints brought to enforce the motor carrier leasing and lumping rules may also seek injunctive relief." *Id.* at 121, U.S.C.C.A.N., 833. The summary clearly contemplates the continued existence of agency orders on claims for damages, and makes no mention of bringing an action for damages without such an order.

d. Department of Transportation Order

In addition to the legislative history, plaintiffs place great emphasis on an order of the Federal Highway Administration ("FHWA"), within the Department of Transportation. In a June 10, 1998 order, the FHWA denied a petition for a declaratory order seeking a ruling that certain companies were violating the truth-in-leasing regulations. *See New Prime,* 63 FR 31827, *in* Federal Register Vol. 63, No. 111.

The FHWA stated its belief that the ICCTA provided for private enforcement of its provisions, allowing an injured party to seek damages against a motor carrier in federal court to redress violations of the truth-in-leasing regulations. Because such claims could be brought in federal court, the agency stated that it would not generally hear them.

The FHWA's reading of the ICCTA was directly contrary to that of the district court in that case, which had dismissed the suit for damages because it found it had no

jurisdiction. Ordinarily, courts are required to accord substantial deference to an administrative agency's interpretation of the statute that it is charged with administering. *See Chevron U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837 (1984). However, the disagreement here is not over an agency decision, but whether a federal court has jurisdiction to hear a particular claim. It is inappropriate for a federal court to expand its jurisdiction in anticipation of agency inaction. *See Central Arizona Water Conservation Dist. v. United States Environmental Protection Agency*, 990 F.2d 1531, 1540 (9th Cir. 1993) (stating that courts should not defer to an agency where the agency has not exercised its expertise).

The text of the ICCTA and the reasoning of the federal courts that have considered this issue lead to the conclusion that there is no private cause of action for damages arising from a violation of the truth-in-leasing regulations.

CONCLUSION

For the above reasons, the Court finds that plaintiffs' state and common law claims are not preempted. The Court also finds that there is no private cause of action under the ICCTA for damages without first obtaining an agency order.

DATED: February 23, 1999

/s/ Mariana R. Pfaelzer
Mariana R. Pfaelzer
United States District Judge

Supreme Court, U.S.
FILED
MAR 8 2000
CLERK

(2)

No. 99-1169

In The

Supreme Court of the United States

NEW PRIME, INC. d/b/a PRIME, INC. and SUCCESS LEASING, INC.,

Petitioners,

v.

UNITED STATES OF AMERICA, FEDERAL HIGHWAY ADMINISTRATION, SECRETARY OF TRANSPORTATION, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., HOWARD JENKINS, MARSHALL JOHNSON, SUSAN JOHNSON, and JERRY VANBOETZELAER,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF *AMICUS CURIAE* AMERICAN TRUCKING ASSOCIATIONS, INC. IN SUPPORT OF PETITIONERS NEW PRIME, INC., ET AL.

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22pp

QUESTION PRESENTED

When Congress passed the ICC Termination Act of 1995, and expressly provided for judicial enforcement of agency "orders," did it thereby intend to create a private right of action to enforce not just orders, but also regulations promulgated by the federal agencies that inherited the ICC's enforcement authority?

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INTEREST OF THE *AMICUS CURIAE*

American Trucking Associations, Inc. ("ATA") is the national trade association of the trucking industry.[1] Through 51 affiliated state trucking associations, located in every state and the District of Columbia, 14 nationally affiliated conferences, and over 2,000 individual motor carrier members, ATA represents over 34,000 motor carriers of every type, including for-hire carriers, private carriers, truck leasing companies, owner-operators, and others. Many of ATA's members have entered into or contemplated entering into truck leasing arrangements that are governed by the federal motor carrier leasing regulations promulgated by the Federal Motor Carrier Safety Administration ("FMCSA").[2] Because of the prevalence of truck leasing arrangements, it is critical that the

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[1] Pursuant to Rule 37.6 of the Rules of this Court, *amicus* states that this brief was not authored in whole or in part by counsel for a party, and no person or entity other than *amicus* or its members made a monetary contribution to the preparation or submission of this brief. Pusuant to Rule 37.2 of the Rules of this Court, the parties have consented to the filing of this brief *amicus curiae*. Their letters of consent have been filed with the Clerk of the Court.

[2] The rules were formerly under the Federal Highway Administration ("FHWA"). Many of the duties and responsibilities of the FHWA, including the provisions of the Act in question herein, were transferred to the FMCSA by Congress in the Motor Carrier Safety Improvement Act of 1999, Pub. L. 106-159 (December 12, 1999), effective January 1, 2000. For the purpose of this brief, *Amicus* will generally continue to refer to the agency as the FHWA.

federal regulations controlling these relationships be uniformly interpreted and enforced in a single forum. That forum, ATA submits, is the FMCSA.

From the standpoint of motor carriers, truck leases provide the operational flexibility needed to meet seasonal and demand fluctuations. Carriers can rapidly expand their fleets without massive capital investments and the administrative inconvenience associated with hiring employee drivers. In addition, some carriers have observed that independent owner-operators, because of their entrepreneurial incentives, are especially productive and reliable. *See generally,* David M. Maister, *Management of Owner-Operator Fleets,* 25-30 (1980).

Truck leasing is also advantageous from the owner-operators' standpoint. It permits independent owner-operators to control their own economic fate and to reap the savings produced by their efficiency and productivity. Owner-operators run their own businesses, monitor their own finances, work the hours and days they choose, select the equipment they operate, and ultimately control their own professional activities. Truck leasing creates opportunities and increased flexibility that these operators would not enjoy as employee drivers. Thus, owner-operators also have a vested interest in ensuring that the federal leasing regulations are consistently interpreted.

The success and well-being of the segment of the trucking industry that leases trucks from owner-operators depends in large part upon the consistent interpretation of the FHWA regulations governing the leasing relationship. ATA and its members believe that the Court of Appeals has jeopardized the practice of truck leasing

by improperly refusing to recognize FHWA's exclusive jurisdiction to enforce its leasing regulations. ATA and its members are concerned that the leasing regulations will not be construed uniformly by the federal district courts and that interstate motor carriers could thus be found in violation of the regulations by one court for the same conduct – for example, for the same provision of a carrier/owner-operator lease used for multi-state truck hauls – that is found to be in compliance by another court. This could greatly complicate and disrupt the interstate operations of tens of thousands of motor carriers nationwide. ATA, on behalf of its members, therefore, has a direct and substantial interest in the leasing issues presented in this matter.

REASONS FOR GRANTING THE PETITION

INTRODUCTION

A conservative estimate sets the number of owner-operators at 168,000 nationally.[3] Those tens of thousands of owner-operators may be leased to any of the more than 500,000 interstate motor carriers registered with the Department of Transportation.[4] Moreover, there is significant owner-operator turnover, with average per-company levels of approximately 20% per year. National Accounting and Finance Council, *1997 Managing Your Independent*

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[3] Martin Labbe Associates, *Owner-Operator Ranks to Grow*, Overdrive, November 1998, at 113.

[4] U.S. Department of Transportation, Federal Motor Carriers Safety Administration, *Fact Sheet*, www.fmcsa.dot.gov/factsfigs/mchsstats/factsheet.htm.

Contractor Fleet Study, 19-21 (1997). The prospect of even 1% of those owner-operators looking to the federal courts to interpret and enforce the federal leasing regulations would produce a litigation quagmire.

Congress in the Interstate Commerce Commission Termination Act ("ICCTA") simply transferred the well-understood, tested leasing rules enforcement procedures it had established for the ICC to the U.S. Department of Transportation. Under those procedures, a party claiming a violation of a leasing regulation must go first to the FHWA, the agency overseeing the regulations, to adjudicate their claim and then may bring a direct civil action in Court only to enforce any order thereafter made by the agency. The U.S. Court of Appeals for the Eighth Circuit's creation of a private right of action to directly pursue an alleged violation of a regulation upsets those procedures, causes substantial uncertainty, and is at odds with the decisions of other lower courts that have recognized the FHWA's appropriate initial role in the process.

The confusion in the lower courts, the disagreement between several courts and the agency over the scope of the agency's powers, and the importance of these issues to the trucking industry, the railroad industry, and other entities formerly under the ICC's jurisdiction, requires the Court's intervention.

ARGUMENT

THE COURT OF APPEALS ERRONEOUSLY CONSTRUED THE ICC TERMINATION ACT TO AUTHORIZE A PRIVATE RIGHT OF ACTION TO ENFORCE THE ESCROW PROVISIONS OF THE LEASING REGULATIONS

In its opinion, the Court of Appeals improperly relied upon the legislative history of the ICC Termination Act ("ICCTA") when the proper scope of the statute can be discerned from the statute itself. The plain intent of the Act was to vest in FHWA (now the FMCSA) mandatory and exclusive jurisdiction over all controversies involving the agency's regulations, and to provide limited private rights of action to enforce agency orders and to enjoin certain specified statutory violations.

It is well settled that the process of statutory construction must begin with the language of the statute itself. *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979). The ICCTA, by its plain terms, permits only FHWA to obtain redress for violations of the agency's regulations through "appropriate action," including, if necessary, civil litigation. A private party, on the other hand, may sue to enforce the statute or an order – but *not* a regulation – of FHWA. Where, as here, Congress has enacted a comprehensive statute that unambiguously imposes certain enforcement duties upon the administering agency while leaving others to the discretion of private parties, a court should not invoke legislative history to defeat the plain intent of the statute. Instead, the process of statutory construction begins and ends with the statutory language itself. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

A. FHWA's Jurisdiction to Enforce Motor Carrier Regulations Is Mandatory

FHWA is charged with regulating motor carriers through enforcement of the provisions of Part B (Motor Carriers) of Title 49 of the United States Code. In carrying out its statutory mandate, FHWA is empowered to prescribe regulations consistent with Part B. *See* 49 U.S.C. § 13301(a). FHWA has the authority to investigate alleged violations on its own initiative or on the basis of a complaint filed with the agency. *See* 49 U.S.C. § 14701(a). In the event a violation is found, FHWA is obligated to "take appropriate action to compel compliance" with the statute and the agency's regulations. *See id.* The "appropriate action" contemplated by the statute includes the filing of a civil action under 49 U.S.C. § 14702 to enforce Part B or any "regulation or order" of FHWA.

The statute unambiguously prescribes that FHWA's jurisdiction is mandatory rather than permissive. *See* 49 U.S.C. § 14701(a) (providing that FHWA *"shall"* take appropriate steps to compel a motor carrier's compliance). The Interstate Commerce Commission ("ICC") recognized as much when, prior to the enactment of the ICCTA, it was charged with enforcing the leasing regulations governing common carriers. *See* Final Rules of the Interstate Commerce Commission, 47 Fed. Reg. 51,136, at 51,137 (1982) ("ICC Final Rules") (explaining that the Commission "will not institute civil actions for breach of contract on behalf of owner-operators[, but] [t]he Commission *will* * * * enforce these regulations and prosecute those carriers which violate the regulations") (emphasis added).

The mandatory wording of the statute itself directly contradicts the Court of Appeals' conclusion that legislative history authorizes private actions to enforce FHWA regulations. Contrary to the Court's holding, the statute's instruction that FHWA *"shall"* take appropriate steps to compel a motor carrier's compliance with its regulations (49 U.S.C. § 14701(a)) leaves the agency with no choice but to adjudicate motor carrier/owner-operator disputes involving the regulations.

B. FHWA's Jurisdiction to Enforce Motor Carrier Regulations Is Exclusive, and Private Parties Are Limited to Causes of Action Expressly Provided for in the Statute

FHWA's jurisdiction with respect to enforcement of the agency's motor carrier regulations is not only mandatory but also exclusive. While § 14704 of Title 49 expressly creates two private causes of action that may include recovery of damages, and one additional private cause of action that is limited to injunctive relief for statutory (but not regulatory) violations, none of these causes of action includes violations of the leasing *regulations*.[5]

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[5] The Court of Appeals' reading of § 14704(a)(2) to create a private right of action has no foundation. As the lower Court observed, the language of that section "is inconsistent [with] language used in the Termination's Act various enforcement provisions." The language of § 14702(a)(2) simply does not mention any right to bring a civil action. It only provides that "a carrier . . . is liable for damages sustained by a person as a result of an act or omission of that carrier . . . in violation of this part." The only plausible reading of that provision is that a person entitled to sue for violation of an agency "order" is entitled not

The first private cause of action that may result in a recovery of damages is available to parties who claim to have been injured by a carrier's violation of an *order* entered by FHWA. *See* § 14704(a)(1) (first sentence). As the Court of Appeals correctly recognized, if FHWA has not entered an order controlling the conduct of the carrier alleged to cause an injury, the aggrieved party has no private cause of action against that carrier under the first sentence of § 14704(a)(1). Instead, the only remedy available to such a party would be to file a complaint with FHWA. This is so because the statutory language expressly authorizes private parties to bring suit under § 14704(a)(1) to enforce an *order* – but not a *regulation* – of FHWA.

The second private cause of action that may result in an award of damages is an action to recover any amounts a carrier may have been charged in excess of the applicable tariff rate. *See* § 14704(b). A party claiming to be so aggrieved may institute a civil lawsuit or may elect to file a complaint with FMCSA pursuant to § 14701(b). *See* § 14704(c).

The only other private cause of action expressly authorized by § 14704 is the authorization of a private action to seek injunctive relief for violations of the specific provisions of §§ 14102 and 14103 – but ***not*** for the regulations issued thereunder. Under these provisions, for example, a private party could seek an injunction compelling the Secretary to initiate administrative or

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only to injunctive relief specified in § 14704(a)(1) but also to monetary damages caused by the violation of the order.

judicial proceedings to enforce compliance by a particular carrier with the regulations issued under § 14102. The Eighth Circuit's holding that the injunctive relief provided for in the second sentence of § 14704(a)(1) applies to regulations promulgated under § 14102 leaves a gaping hole in the private right of action supposedly created. As the Court of Appeals recognized, even if the injunctive relief authorized by § 14704 reaches the regulations issued under § 14102, that conclusion would not permit private enforcement of the leasing regulations at issue in this case, which are authorized by § 13301. Had Congress contemplated ***private*** enforcement of the motor carrier regulations – which in the aggregate span more than 375 pages of the Code of Federal Regulations, including numerous regulations authorized by § 13301 – surely it would have incorporated an express right of action in § 14704. *See generally, Vosch v. Werner Continental, Inc.*, 734 F.2d 149 (3d Cir. 1984) (holding that private plaintiffs could not state a cause of action for private enforcement of the motor carrier safety regulations).

Congress, in enacting § 14704, purposefully enabled private litigants to enforce violations of FHWA *orders* while vesting FHWA with exclusive jurisdiction to enforce its *regulations*. The omission of a private cause of action to enforce FHWA regulations was deliberate. "Nothing, indeed, but a different intent explains the different treatment." *Lindh v. Murphy*, 117 S.Ct. 2059, 2064 (1997).

C. The Court of Appeals Provided No Rational Basis for Overriding the Strong Presumption Against Recognition of Implied Causes of Action

The Court of Appeals recognition of an implied private cause of action under § 14704 disturbs the carefully allocated burdens of enforcement established by Congress and it ignores the strong presumption disfavoring the creation of implied remedies. Section 14704 is one of many enactments by which "Congress in regulating economic enterprise has divided the duty of enforcement between courts and administrative agencies." *See generally, United States v. Ruzicka*, 329 U.S. 287, 295 (1946). Congress enabled private parties to prosecute violations of *orders* issued by FHWA, leaving to the agency the task of determining whether there has been a violation of its regulations in the first place. Because the plain provisions of § 14704 do not permit private parties to enforce FHWA regulations, persons claiming to be aggrieved by a motor carrier's violation of a regulation must, as a preliminary step, petition FHWA for relief. *See Ruzicka*, 329 U.S. at 294 ("Congress has provided that the remedy in the first instance must be sought from the Secretary of Agriculture. It is on the basis of his ruling, and of the elucidation which he would presumably give to his ruling, that resort may be had to the courts.").

Well-established principles of statutory construction counsel against the recognition of an implied private cause of action where Congress has provided a comprehensive enforcement scheme. *See, e.g., Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985) ("The

assumption of inadvertent omission is rendered especially suspect upon close consideration of ERISA's interlocking, interrelated, and interdependent remedial scheme, which is in turn part of a comprehensive and reticulated statute.") (internal quotation omitted). This Court has explained that "when legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies." *National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers*, 414 U.S. 453, 458 (1974). Where, as here, the statute "creates a public cause of action for the enforcement of its provisions and a private cause of action only under very limited circumstances," *id.* at 458, the latter maxim compels the conclusion that the express remedies created by the statute are the exclusive means of enforcement, and do not include a private right of action for regulatory enforcement.

D. The Construction of the Predecessor of § 14704 (Former § 11705) Supports Enforcement of the Plain Meaning of the Statute

Section 14704 traces its roots to § 11705 of the former Interstate Commerce Act ("ICA"), which by its terms permitted a private right of action under certain circumstances against common carriers providing transportation under Subchapters I and III of the ICA (pertaining to rail carriers and pipelines, but not motor carriers).[6]

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[6] An express private cause of action against motor carriers similar to § 11705 was first recognized in 1995 with the enactment of ICCTA.

The history of § 11705 provides telling insights into the proper construction of the private right of action against motor carriers authorized by § 14704 because the provisions of the two sections are very similar. Furthermore, when § 14704 was enacted as part of the ICCTA, the language of former § 11705 survived nearly, but not completely, intact. Significantly, there are no reported cases construing former § 11705 to permit a private right of action to enforce agency *regulations* in advance of an agency determination of noncompliance.

Section 11705 was consistently interpreted to permit a private cause of action against a common carrier only *after* the ICC had evaluated the controversy and ordered certain relief. *See, e.g., Kraus v. Santa Fe S. Pac. Corp.*, 878 F.2d 1193, 1198-1199 (9th Cir. 1989) (holding that an ICC determination of liability is a jurisdictional prerequisite to the commencement of a private civil action); *De la Fuente v. Stokely-Van Camp, Inc.*, 514 F.Supp. 68, 78 (C.D. Ill. 1981). In the event a common carrier failed to tender the relief ordered by the ICC, a private party could bring suit under former subsection (b)(1) to recover a tariff overcharge, or under former subsection (b)(2) to obtain relief for damages sustained as a result of an act or omission of a carrier in violation of the statute. The district court in *De la Fuente* recognized that § 11705 was a carefully articulated enforcement scheme authorizing a private right of action only "when the Interstate Commerce Commission has ordered the payment of damages and the order has not been complied with by the carrier." 514 F.Supp. at 78. Furthermore, the court expressly rejected the suggestion that an implied right of action might also exist under § 11705 because "the instances in which a

private right of action are available are outlined with great specificity in the statute, [and] it seems highly improbable that Congress absentmindedly forgot to mention an intended private action." *Id.* at 78 (internal citations omitted).

The judiciary's refusal to recognize implied causes of action under § 11705 is instructive because the enforcement mechanisms expressly provided for in that section closely parallel those incorporated into its successor, § 14704. Aggrieved parties seeking private redress under the former § 11705 were limited to the remedies expressly provided for in that section and it is entirely appropriate that its successor, § 14704, be construed in the same narrow fashion. *See Central Bank v. First Interstate Bank,* 511 U.S. 164, 185 (1994) ("When Congress reenacts statutory language that has been given a consistent judicial construction, we often adhere to that construction in interpreting the reenacted statutory language.").

E. The Absence Of A Limitations Period in the Statute Shows That No Private Right of Action Was Created By Congress

49 U.S.C. § 14705 provides limitations periods for every cause of action under the Act,[7] setting out

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[7] Section 14705 proves only the following five limitations periods:

1. 18 months after accrual for a carrier to recover charges for transportation or services provided by the carrier (49 U.S.C. § 14705(a));

limitations periods for five separate causes of action. Significantly, that Section contains no limitations period for the alleged private right of action contemplated by the Court of Appeals in this matter. Rather, § 14705, like § 14704(a)(1), provides specifically that "a person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order." 49 U.S.C. § 14705(e). There is no mention of any limitations period for some general civil action to recover money damages for a violation of agency regulations.

This lack of an applicable limitations period has been recognized by courts to bar private actions under the Act to enforce agency regulations. In *DeBruce Grain v. Union Pacific R. Co.*, 983 F. Supp. 1280 (W.D. Mo. 1997), aff'd, 149 F.3d 787 (8th Cir. 1998), for example, the Court rejected a

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2. 18 months after accrual for a civil action to recover overcharges from a carrier (49 U.S.C. § 14705(b));

3. two years from accrual to file a complaint against a carrier for damages for exceeding the tariff rate under § 14704(b) (49 U.S.C. § 14705(c));

4. one year after the date of an order "to enforce an order of the Board or Secretary against a carrier" (49 U.S.C. § 14705(e));

5. three years for actions relating to transport for the United States Government. (49 U.S.C. § 14705(f)). No other limitations periods appear in the Act. There is specifically no limitations period for any kind of civil enforcement action other than the one-year period for enforcing an agency order set out in § 14704(e).

party's attempt to enforce an agency regulation, specifically noting the absence of an applicable limitation statute:

> The lack of a limitation period for the type of suit brought by Plaintiff is conspicuous and suggests that when Congress permitted "civil actions" under § 11704(b) (as provided in section 11704(c)), it meant to do so only with respect to an action to recover overcharges. To interpret § 11704(b) as broadly as Plaintiff suggests would leave Plaintiffs with no limitation period, which is an absurd result that Congress could not have intended.

DeBruce Grain, 983 F.Supp. at 1284 (citation omitted).

The Court in *Renteria v. K&R Transportation Co.*, Case No. CV98-290MRP (C.D. Cal. February 23, 1999) (which has been provided in the Appendix to Petitioner's Petition) relied on this same lack of a limitations statute in holding that the exact provisions now at issue did not authorize the broad private right of action recognized by the Eighth Circuit:

> The court in *DeBruce* put emphasis on the structure of the applicable statutes of limitations. The Act provides for a limitation period for civil actions to recover overcharges and for civil actions to enforce an order from the Board. *See* 49 U.S.C. §§ 11705, 14705. There is no provision governing the filing of a civil action for any other types of damages. If other actions for damages were allowed, plaintiffs would appear to have no limitations period, a result the *DeBruce* court dismissed as "absurd." Id. at 1284. This suggests Congress did not intend to

permit civil actions for damages for violations of regulations.

Slip Op. at 11.

CONCLUSION

The Court of Appeals erred in affirming the FHWA's decision.

First, the Court erred in concluding that regulations issued under § 14102 can be privately enforced pursuant to § 14704. Only statutory violations of §§ 14102 and 14103 can be privately enforced in the first instance. Violations of regulations can be privately enforced only after FHWA has first found a violation in an administrative process, and has ordered compliance. Moreover, the Court erred in not recognizing that if Congress had intended to create a new private cause of action as part of ICCTA, it would have established a statute of limitations as it did with other such causes under the Act.

The Court should grant certiorari to correct these errors.

Respectfully submitted,

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DATED: March 8, 2000

Supreme Court, U.S.
FILED
MAR 10 2000
OFFICE OF THE CLERK

(3)

No. 99-1169

In The

Supreme Court of the United States

NEW PRIME, INC. D/B/A PRIME, INC., and SUCCESS LEASING, INC.,

Petitioners,

v.

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Eighth Circuit's decision below is correct in holding that the judicial enforcement provisions of 49 U.S.C. § 14704(a) establish a private right of action for direct judicial enforcement of federal motor carrier leasing regulations.

LIST OF PARTIES TO PROCEEDINGS BELOW

Petitioners (Defendants-Appellants Below)

New Prime, Inc. d/b/a Prime, Inc., and Success Leasing, Inc.

Respondents (Plaintiffs-Appellees Below)

Owner-Operator Independent Drivers Association, Inc., Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer.

The Owner-Operator Independent Drivers Association, Inc., does not have any parent companies or non-wholly owned subsidiaries.

Amicus Curiae

The American Trucking Association, Inc. ("ATA") was a party to the proceeding before the U.S. Department of Transportation, Federal Highway Administration. ATA abandoned its party status and appeared before the Eighth Circuit as *Amicus Curiae*. ATA has requested permission to file a brief as *Amicus Curiae* before this Court.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Owner-Operator Independent Drivers Association, Inc., et al., on behalf of themselves and others similarly situated, respectfully request that this Court deny the Petition for Writ of Certiorari of Petitioners New Prime, Inc., d/b/a Prime, Inc. and Success Leasing, Inc., seeking review of the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on August 10, 1999.

STATUTES INVOLVED

This brief involves federal statutes 28 U.S.C. § 1658, 49 U.S.C. § 10501, and 49 U.S.C. § 13501, the complete texts of which are set forth in the Appendix to this brief. (App. 1-App. 4). Also involved are 49 U.S.C. §§ 14704, 14705. (Pet. App. at 34a-39a).

STATEMENT OF THE CASE

Respondent Owner-Operator Independent Drivers Association, Inc. ("OOIDA") is a trade association of approximately 47,000 members that has represented the interests of owner-operators and other small business truckers since 1973. "Owner-operators" are traditionally small business truckers who own and operate a truck tractor (of a tractor-trailer combination). They lease their tractor and their driving services to a motor carrier (such as Petitioners) owning a fleet of trailers, agreeing to haul the motor carrier's freight-laden trailers in interstate

commerce in exchange for specified compensation. The terms of these leases between a motor carrier and an owner-operator are governed by 49 U.S.C. § 14102 and 49 C.F.R. Part 376. Respondents brought suit against Petitioners under 49 U.S.C. § 14704(a) (Pet. App. at 34a-35a), a private judicial enforcement statute, for violations of the federal motor carrier leasing regulations contained in 49 C.F.R. Part 376. Petitioners now seek review of the Eighth Circuit's ruling that the private right of action in § 14704(a) enables owner-operators to obtain relief for violations of the leasing regulations in federal court.

A. Regulatory Context

The private civil enforcement statute at issue in this case marks the culmination of Congress' "15-year effort to deregulat[e] the motor carrier industry [in the United States]," *ICC Termination Act of 1995: Report of the Committee on Transportation and Infrastructure on H.R. 2539*, H.R. Rep. No. 104-311, at 91 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793, 803 (the "1995 House Report"). Beginning with the Interstate Commerce Act of 1935, a growing bureaucracy in the Interstate Commerce Commission ("ICC") regulated virtually every aspect of the trucking industry – from who could obtain authorization to engage in interstate commercial motor transport, to what rates they could charge, to which routes they could travel to transport property. *Id.* During this period, the ICC's dispute resolution programs were the principal avenue for obtaining redress for violations of federal motor carrier regulations.

By 1980, an exhaustive congressional study on federal regulation of the motor carrier industry demonstrated the need to curtail governmental involvement in the trucking industry. The House of Representatives committee report resulting from that study recommended enactment of the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793 (codified as amended in scattered sections of Title 49 U.S.C.), plainly stating that the purpose of the new legislation was "to reduce unnecessary regulation by the Federal Government," and that congressional findings suggested the ICC be "admonished to stay within the powers specifically vested in it by the revised law." *Motor Carrier Act of 1980: Report from the Committee on Public Works and Transportation*, H.R. Rep. No. 96-1069, at 1, 10-11 (1980), *reprinted in* 1980 U.S.C.C.A.N. 2283, 2292-93. Subsequently, Congress continued to enact legislation further deregulating the motor carrier industry and whittling away the size and scope of the ICC. *See* 1995 House Report at 82, 91-93, 1995 U.S.C.C.A.N. at 794, 803-805.

In 1995, Congress took a significant step forward in its motor carrier deregulation plan by abolishing the ICC and creating a private right of judicial enforcement (49 U.S.C. § 14704). Enforcement of many motor carrier regulations were removed from agency control and put into the hands of the individual parties involved. *See generally*, ICC Termination Act of 1995 ("ICCTA"), Pub. L. No. 104-88, 109 Stat. 803 (codified as amended in scattered

sections of Title 49 U.S.C.), effective January 1, 1996;[1] *see also* 1995 House Report at 87-88, 1995 U.S.C.C.A.N. at 799-800.

In enacting the ICCTA, Congress expressed a conscious intent to depart from the ICC-run dispute resolution programs, including those for "owner-operator leasing," *see* 1995 House Report at 87, 1995 U.S.C.C.A.N. at 799, and to reduce the Federal Government's enforcement burden through the establishment of a private right of action. Under the heading "*Existing ICC functions that have been eliminated, deregulated or reformed,*" the 1995 House Report confirmed that "[f]ederal resolution of routine commercial disputes *has been eliminated.*" *Id.* at 84, 1995 U.S.C.C.A.N. at 796 (emphasis added). The corresponding Senate committee report announced, "[t]he Committee also contemplates that . . . the ICC's traditional function of informally resolving disputes in these areas [including motor carrier leasing rules] would not be continued. *The [ICCTA] bill enables aggrieved parties to take such disputes directly to the courts.*" *Interstate Commerce Commission Sunset Act of 1995: Report of the Committee on Commerce, Science, and Transportation on S. 1396*, S. Rep. No. 104-176, at 11 (1995) (emphasis added).

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[1] Under the ICCTA, all of the ICC's authority and functions were transferred to the U.S. Department of Transportation ("DOT") and the Surface Transportation Board (the "Board"). The Board is an independent agency within the DOT, and was created upon termination of the ICC. It oversees federal administration of several modes of interstate and intrastate transportation, primarily railroads. DOT is responsible for much of the motor carrier regulation surviving the enactment of the ICCTA.

The legislative plan for filling the gap in enforcement left by the termination of the ICC's dispute resolution programs was outlined as follows:

> The [ICCTA] bill transfers responsibility for all the areas in which the ICC resolves disputes to the Secretary [of the DOT] (except passenger intercarrier disputes). The Committee [on Transportation and Infrastructure] does not believe that DOT should allocate scarce resources to resolving these essentially private disputes, and *specifically directs that DOT should not continue the dispute resolution functions in these areas. The bill provides that private parties may bring actions in court to enforce the provisions of the Motor Carrier Act*. This change will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved – by the parties.

1995 House Report at 87-88, 1995 U.S.C.C.A.N. at 799-800 (emphasis added); *see also* 1995 House Report at 117, 1995 U.S.C.C.A.N. at 829 ("the Committee directs that upon transfer [of ICC duties to DOT], *DOT should not continue any dispute resolution functions regarding the ICC leasing rules, but rather only oversee the regulations*") (emphasis added).

Commenting on the specific statutory provision that establishes the new role of private individuals in dispute resolution for motor carrier regulations, 49 U.S.C. § 14704(a), the 1995 House Report explained:

> [Section 14704] provides for *private enforcement* of the provisions of the Motor Carrier Act *in court*. This expands the current law which only

> permits complaints brought under the Act to be brought before the ICC.

1995 House Report at 120-21, 1995 U.S.C.C.A.N. at 832-33 (emphasis added).

Further, the DOT itself, prior to the passage of the ICCTA, reported to Congress on the specific issue of private enforcement of the leasing regulations involved in this case.

> The leasing rules have no doubt provided protection to owner-operators in their dealings with regulated [motor] carriers. However, the cost of Federal enforcement of these rules has been significant. . . . *There does not appear to be sufficient justification to continue these enforcement expenses.*
>
> Given the uneven bargaining power of owner-operators, the small dollar amount of their claims, and the unique nature of their operations, *DOT recommends that . . . the leasing rules be retained in their present form. In lieu of Federal enforcement, owner-operators will be given the right of private action to enforce them.* . . .

U.S. Dept. of Transportation, *Report on the Functions of the Interstate Commerce Commission* 86 (July 1995) (emphasis added).

Since the enactment of the ICCTA, the Federal Highway Administration ("FHWA"), the agency within DOT responsible for administration of the federal motor carrier laws and regulations involved in this case, has interpreted the civil enforcement provisions in 49 U.S.C. § 14704 in accordance with this expressed intent to get enforcement of motor carrier leasing regulations out of

the hands of government and into the hands of the parties involved. *See infra* Section C. Proceedings Before the FHWA.

B. Proceedings Before the District Court

Pursuant to the private right of action under 49 U.S.C. § 14704, Respondents filed this class action suit charging that Petitioners' motor carrier lease agreements violate federal motor carrier leasing regulations, in that they unlawfully permit Petitioners to withhold and retain thousands of dollars in escrow funds belonging to owner-operators.

Petitioners moved to dismiss Respondents' complaint, arguing that "primary jurisdiction" over Respondents' claims rests with the DOT and the FHWA. The district court granted Petitioners' motion to dismiss, remarking that DOT should handle Respondents' claims because they are beyond the expertise of the district court, and for the sake of uniformity of agency decisions. (Pet. App. at 22a-23a). Despite its articulated need for agency guidance, however, the district court failed to refer Respondents' claims to the DOT, and instead entered a judgment dismissing Respondents' complaint outright. (Pet. App. at 23a). Respondents appealed to the Eighth Circuit.

C. Proceedings Before the FHWA

While their appeal was pending in the Eighth Circuit, Respondents submitted a petition for declaratory order to the FHWA. (Pet. App. at 40a-53a). Respondents requested

that the agency provide guidance on the issues implicated in the dismissed lawsuit, or in the alternative, declare that applicable law does not confer upon the FHWA primary jurisdiction over private commercial disputes involving the federal motor carrier leasing regulations, and that such disputes should be resolved by the federal courts pursuant to the ICCTA. (Pet. App. at 51a-53a).

On May 29, 1998, the FHWA issued a Notice (the "FHWA Notice") in which it announced that it would not exercise jurisdiction over Respondents' claims. (Pet. App. at 24a, 30a). No administrative proceeding or adjudication of the issues was conducted.[2] The agency also published the FHWA Notice in the Federal Register "to provide guidance to courts, carriers, owner-operators and other interested parties" regarding the agency's policy on

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[2] On June 24, 1998, Petitioners submitted to FHWA a motion for reconsideration of the FHWA Notice. The American Trucking Associations, Inc. (the "ATA"), a motor carrier association, also submitted to the FHWA its own petition for reconsideration. Both Petitioners and the ATA offered arguments that were substantively similar to those set forth in their briefs on appeal to the Eighth Circuit. On August 11, 1998, the FHWA denied Petitioners' and the ATA's respective requests for reconsideration, and Petitioners thereupon filed their petition for review of the FHWA Notice with the Eighth Circuit. Motor carrier Arctic Express, Inc., and its affiliate D&A Associates, Ltd., defendants in a separate action by OOIDA in the U.S. District Court for the Southern District of Ohio, filed their own challenge to the FHWA Notice via petition to the U.S. Court of Appeals for the Sixth Circuit. The Sixth Circuit transferred that petition to the Eighth Circuit for consolidation with those of Petitioners and ATA.

dispute resolution involving the leasing regulations. (Pet. App. at 24a-25a).

The FHWA confirmed that 49 U.S.C. § 14704 provides a private right of action to enforce motor carrier leasing regulations:

> The ICCTA expanded the rights and remedies of persons injured by carriers by providing for private enforcement of its provisions in court. *Under 49 U.S.C. § 14704, an injured party may seek both damages and injunctive relief against a motor carrier in federal district court to redress violations of part 376.*

(Pet. App. at 27a-28a) (emphasis added). Regarding the matter of primary jurisdiction, the FHWA observed that:

> [S]pecial expertise is generally not needed to resolve disputes regarding the part 376 truth-in-leasing regulations. These regulations contain specific, straightforward, non-technical requirements which a court is ordinarily competent to construe. *Consistent with Congressional intent underlying 49 U.S.C. § 14704, the FHWA will generally decline to exercise its primary jurisdiction with regard to court referrals involving violations of part 376.*

(Pet. App. at 29a) (emphasis added).

D. The Opinion of the Eighth Circuit

The Eighth Circuit found that 49 U.S.C. § 14704(a) creates a private right of action for injunctive relief and damages for violations of certain motor carrier leasing

regulations. (Pet. App. at 12a-14a). Focusing on the language of the statute, the court of appeals found that § 14704(a)(1) *expressly* creates a private right of action for injunctive relief (Pet. App. at 12a-13a), and that the explicit language of § 14704(a)(2) making motor carriers liable for damages arising from their violation of motor carrier laws supports the existence of a private right of action – a reading of the statutory language amply reinforced by the legislative history of the subsection (Pet. App. at 13a-14a). The Eighth Circuit denied review of the petitions challenging the FHWA Notice (Pet. App. at 17a), and reversed the district court dismissal of Respondents' complaint based on primary jurisdiction (Pet. App. at 15a-16a).

REASONS FOR DENYING THE WRIT

The Eighth Circuit's decision below is clearly correct. The court of appeals' opinion simply adheres to the plain language of the statute at issue, confirmed by the well-documented intent of Congress to provide parties injured by motor carriers a judicial forum in which to seek redress for violation of federal motor carrier regulations. In reaching its result, the Eighth Circuit never departed from commonly used methods of statutory interpretation established by this Court. Moreover, there are no conflicting court of appeals decisions. The result of the Eighth Circuit opinion is also in complete agreement with the determination of the FHWA that Section 14704(a) creates a private right of action for enforcing the federal motor carrier leasing regulations.

I. THE OPINION OF THE EIGHTH CIRCUIT IS CLEARLY CORRECT

In deciding this case, the Eighth Circuit followed standard rules of statutory interpretation approved by this Court. In each instance, the court of appeals adhered to the language of the statute at issue when determining its meaning, looking to the unambiguous legislative history of the statute only once when it perceived a drafting inconsistency, and then only to confirm the most plausible construction of the statute's plain language.

A. Private Right of Action – § 14704(a)

Respondents' appeal to the Eighth Circuit asserted that this case rightfully belongs in the district court, pursuant to the private right of action created by 49 U.S.C. § 14704. The Eighth Circuit began its analysis conservatively with a step-by-step examination of the statute itself, stating, "in all events our principal focus must be on the language of the relevant statutes." (Pet. App. at 7a). The court started with the first sentence of § 14704(a)(1), which provides a private right of action for enforcing an "order" of the DOT and its agencies. In spite of argument by the FHWA itself that the word "order" in the first sentence does include the agency's motor carrier leasing regulations, the court held that the plain language of the first sentence does not provide a private right of action to enforce agency *regulations*. (Pet. App. at 10a-11a).

The court of appeals then proceeded to the language of the second sentence of § 14704(a)(1), which states: "A

person may bring a civil action for injunctive relief for violations of sections 14102 [dealing with the DOT's general authority over motor carrier leases] and 14103." Again, following the plain language of the statute itself, the Eighth Circuit rejected Petitioners' argument that because this second sentence appears in a paragraph entitled, "Enforcement of order," the sentence is limited to actions to enforce agency *orders* only. (Pet. App. at 11a-12a). Rather, the court concluded that Congress never intended the second sentence to be limited to actions enforcing agency *orders* because: 1) section and subchapter titles cannot alter the plain meaning of a statute,[3] 2) the "plain language" of the second sentence of § 14704(a)(1) makes no mention of limitation to violations of agency *orders*, and 3) in legislative conference prior to enactment, the second sentence was appended to the end of § 14704(a)(1) from another subsection which had no connection to agency orders. (Pet. App. at 11a-12a). Thus, cautious deference to the plain language of the second sentence of § 14704(a)(1) led the court of appeals to the conclusion that the second sentence supports a private right of action for injunctive relief for violation of certain motor carrier regulations. (Pet. App. at 13a).

The court of appeals next reviewed the language of § 14704(a)(2), which states: "A carrier . . . is liable for damages sustained by a person as a result of an act or

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[3] *See Pennsylvania Dept. of Corrections, et al. v. Yeskey*, 524 U.S. 206, 212 (1998) (" 'The title of a statute . . . cannot limit the plain meaning of the text. For interpretive purposes, [it is] of use only when [it] shed[s] light on some ambiguous word or phrase' ") (*quoting Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528-529 (1947)).

omission of that carrier . . . in violation of this part [pertaining to interstate transport by motor carriers]." Here, the Eighth Circuit rejected Petitioners' argument that the "order" language appearing in the first sentence of § 14704(a)(1) limits the civil action referred to in § 14704(a)(2). Again, the court of appeals conservatively read the provisions according to the plain language of the statute:

> We decline to read these two subsections [(a)(1) and (a)(2)] as interrelated. They are separate parts of § 14704(a), which is entitled, "In General." Moreover, a review of § 14704 in the two bills that were sent to conference . . . reveals that the Conference Committee drafters reorganized this section in the final bill – the enforcement of agency orders section that is now § 14704(a)(1) and the damage remedy that is now § 14704(a)(2) were not previously linked.

(Pet. App. at 13a). Consequently, the court of appeals drew the appropriate conclusion that the plain language of § 14704(a)(2) establishes a private right of action for damages for violations of regulations, not merely violations of orders, because the plain language does not support limitation of paragraph (a)(2) by paragraph (a)(1), and because the most logical reading of the provision commands this result, *see generally Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 607-608 (1991) (Court followed "most plausible reading" of statutory language when Congress' intent was not explicit).

Although it had found that the most logical reading of the plain language of § 14704(a)(2) supports a private

right of action for damages for violation of agency regulations, the court of appeals noticed an inconsistency in the drafting of § 14704(a)(2). (Pet. App. at 13a-14a). The provision's grant of a remedy is explicit, while the right to bring an action that secures the remedy is implicit. Maintaining its fidelity to established principles of statutory interpretation, the Eighth Circuit rightly pointed out that "[i]n construing this inconsistently drafted statute, it is appropriate to use its legislative history to confirm the most plausible construction of a subsection's plain language." (Pet. App. at 14a (*citing Mortier*, 501 U.S. at 610 n.4 (1991))). Consequently, the court of appeals looked to the legislative history to *confirm* what it already deemed the most logical reading of § 14704(a)(2). As has been discussed above, the legislative history clearly supports that reading of § 14704(a)(2).

B. Primary Jurisdiction

The Eighth Circuit also found that the district court has concurrent jurisdiction with the FHWA (Pet. App. at 15a), and that the doctrine of primary jurisdiction no longer justified dismissal of Respondents' complaint (Pet. App. at 16a). The court of appeals noted that the agency declined to exercise jurisdiction over the matter, expressing "its view that resolution of [Respondents'] . . . claims 'are fairly straightforward matters clearly within the competence of a court to resolve.' " (Pet. App. at 15a (*citing* the FHWA Notice, Pet. App. at 29a)). On the basis of *Heckler v. Chaney*, 470 U.S. 821, 837 (1985) ("the presumption that agency decisions not to institute proceedings are

unreviewable" militates against courts compelling agencies to exercise jurisdiction), the court of appeals properly directed the district court to exercise its jurisdiction over the case. (Pet. App. at 16a).

II. THERE IS NO CONFUSION AMONG THE LOWER COURTS

Petitioners do not argue that there is a split of authority among the courts of appeals over whether 49 U.S.C. § 14704(a) creates a private right of action to enforce federal motor carrier leasing regulations. (Pet. at 7). Rather, Petitioners focus on two district court opinions interpreting an unrelated *rail carrier* civil enforcement statute (49 U.S.C. § 11704), which merely authorizes civil suits to enforce orders of the Surface Transportation Board ("the Board"). *DeBruce Grain, Inc. v. Union Pacific R.R.*, 983 F. Supp. 1210, 1283-84 (W.D. Mo. 1997), *aff'd on other grounds*, 149 F.3d 787 (8th Cir. 1998); *City of Laredo v. Texas Mexican Ry.*, 935 F. Supp. 895, 897-898 (S.D. Tex. 1996).

Petitioners' claim that those two *rail carrier* opinions are at odds with the Eighth Circuit's instant holding – that the *motor carrier* civil enforcement statute (49 U.S.C. § 14704) authorizes suits to enforce motor carrier leasing regulations of the DOT – is misguided. Petitioners overlook the fact that the federal statutory regime set forth in Title 49, U.S.C. treats rail carriers and motor carriers differently.[4] The crucial distinction between the provisions dealing with rail carriers and those dealing with

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[4] Interstate transportation by rail carriers is primarily governed by statutes appearing in "Part A – Rail" of Subtitle IV

motor carriers lies in the respective grants of jurisdiction to the Board in Part A (Rail) and to the DOT in Part B (Motor Carriers) of Subtitle IV of Title 49, U.S.C. *See* 49 U.S.C. § 10501 (App. 1-App. 3); 49 U.S.C. § 13501 (App. 4).

Under Part A, the section entitled "General Jurisdiction" provides the Board "exclusive" jurisdiction over rail carrier transportation. *See* 49 U.S.C. § 10501(b). This statute also specifies that the remedies provided in Part A are not only exclusive, but that they "preempt the remedies provided under Federal or State law." *Id.* Under Part B, the corresponding motor carrier section entitled "General Jurisdiction" states merely that the DOT[5] has jurisdiction over certain motor transport, mostly interstate. 49 U.S.C. § 13501. Unlike the corresponding rail provision, the motor carrier provision does *not* make the DOT's jurisdiction over certain motor carrier issues *exclusive*. On the contrary, Part B remedies are "in addition to remedies existing under other law or common law." 49 U.S.C. § 13103.

("Interstate Transportation") of Title 49 ("Transportation") of the United States Code. *See generally,* 49 U.S.C. §§ 10101-11908. Interstate transportation by motor carriers is primarily governed by statutes appearing in "Part B – Motor Carriers, Water Carriers, Brokers, and Freight Forwarders" of Subtitle IV of Title 49, United States Code. *See generally,* 49 U.S.C. §§ 13101-14914.

[5] Section 13501 also grants jurisdiction to the Board for limited motor carrier functions, such as rate determinations. It is the DOT, however, that has jurisdiction over the background commercial rules for owner-operator leasing that are at issue in this case. *See* 49 U.S.C. §§ 13301(a), 14102; *see supra* Section A. Regulatory Context.

This distinction explains why courts interpreting the private enforcement provision of Part A for rail carriers (49 U.S.C. § 11704) come to a different result than the Eighth Circuit did in the instant case when interpreting the motor carrier private enforcement provision under Part B (49 U.S.C. § 14704). In fact, both rail cases cited by Petitioners *explicitly* recognized that the rail carrier jurisdictional statute, Section 10501, grants "exclusive" jurisdiction to the Board, thus limiting the Part A rail carrier private enforcement statute, Section 11704, to merely authorizing suits to enforce the orders of the Board, as opposed to its regulations. *See DeBruce*, 983 F. Supp. at 1283; *City of Laredo*, 935 F. Supp. at 897-98. The differences in result do not reflect confusion among the lower courts. Instead, they simply reflect the material differences between Part A and Part B of Subtitle IV, Title 49, U.S.C. regarding the extent of agency jurisdiction over two very different modes of transportation.

The only motor carrier case upon which Petitioners rely to portray confusion in the lower courts is an unreported district court decision – *Renteria v. K & R Transp., Inc.*, Case No. CV-98-290MRP (C.D. Cal. Feb. 23, 1999). (Pet. App. at 54a-66a). The district court in *Renteria* made the same error that Petitioners urge upon this Court, applying the *rail carrier* precedent of *DeBruce* and *City of Laredo* (interpreting Part A, Subtitle IV, Title 49) to the *motor carrier* statutes (Part B, Subtitle IV, Title 49) before it. The fallacy in this reasoning is described above.

Another error in the *Renteria* opinion that Petitioners press upon this Court is the mistaken conclusion that the absence in 49 U.S.C. § 14705 of a specific statute of

limitations for private suits to enforce motor carrier regulations (via Section 14704) supports the inference that no such private right of action was ever intended by Congress. (Pet. at 10-13). Petitioners and the *Renteria* court, however, completely overlook the fact that in 1990, Congress provided a "catch-all" limitations period of four years for any "civil action arising under an Act of Congress enacted after" December 1, 1990, unless a different period was otherwise provided by law. 28 U.S.C. § 1658 (App. 1). Given this "catch-all" statute of limitations, Petitioners cannot convincingly argue that the absence of a specific limitations provision in Section 14705 suggests that Congress did not intend to establish a private right of action. Moreover, such an inference must be rejected in light of Congress' clear expression of intent to the contrary contained in the congressional committee reports accompanying the passage of the ICCTA of 1995, discussed *supra*.

Petitioners are wrong to suggest that there is confusion among the lower courts that this Court needs to address. Given the well-reasoned opinion by the Eighth Circuit in this case, the decision of the California district court in *Renteria* is unlikely to cause confusion.

CONCLUSION

The petition for writ of certiorari should be denied.

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March 10, 2000

28 U.S.C. § 1658. Time limitations on the commencement of civil actions arising under Acts of Congress

Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.

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49 U.S.C. § 10501. General jurisdiction

(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is –

(A) only by railroad; or

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in –

(A) a State and a place in the same or another State as part of the interstate rail network;

(B) a State and a place in a territory or possession of the United States;

(C) a territory or possession of the United States and a place in another such territory or possession;

(D) a territory or possession of the United States and another place in the same territory or possession;

(E) the United States and another place in the United States through a foreign country; or

(F) the United States and a place in a foreign country.

(b) The jurisdiction of the Board over –

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(c)(1) In this subsection –

(A) the term "local governmental authority" –

(i) has the same meaning given that term by section 5302(a) of this title; and

(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B) the term "mass transportation" means transportation services described in section 5302(a) of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.

(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to –

(i) safety;

(ii) the representation of employees for collective bargaining; and

(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

(B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before the effective date of the ICC Termination Act of 1995. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

(Added Pub.L 104-88, Title I, § 102(a), Dec. 29, 1995, 109 Stat. 807.)

49 U.S.C. § 13501. General jurisdiction

The Secretary and the Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier –

(1) between a place in –

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

(Added Pub.L. 104-88, Title I, § 103, Dec. 29, 1995, 109 Stat. 859.)

Supreme Court, U.S.
FILED
MAR 13

(4)

No. 99-1169

In the Supreme Court of the United States

NEW PRIME dba PRIME, INC. AND SUCCESS LEASING, INC., PETITIONERS

v.

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether a person who allegedly has been injured by a federally registered motor carrier's violation of the Federal Highway Administration's "Truth-in-Leasing" regulations, 49 C.F.R. Pt. 376, may bring an action in the federal district court against the carrier, without first obtaining an administrative ruling from the agency.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 192 F.3d 778. The opinion of the district court (Pet. App. 18a-23a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 10, 1999. A petition for rehearing was denied on October 13, 1999 (Pet. App. 31a). The petition for a writ of certiorari was filed on January 11, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Motor Carrier Act, the former Interstate Commerce Commission (ICC) was authorized to regulate the leasing arrangements between independent owner-operators and authorized carriers. *American Trucking Ass'ns, Inc.* v. *United States*, 344 U.S. 298 (1953). Following a national strike by independent truck owner-operators in 1973 that seriously interfered with the Nation's commerce, the ICC adopted regulations to establish minimum standards for leasing of independent owner-operators' trucking equipment by authorized interstate motor carriers. *Lease and Interchange of Vehicles*, 131 M.C.C. 141 (I.C.C. 1979); 49 C.F.R. Pt. 376. In general, those regulations leave the terms and conditions of the leasing arrangements to the marketplace, but require that those agreements be reduced to a writing that sets forth basic terms and conditions. Hence they are commonly referred to as the trucking "Truth-in-Leasing" regulations.

Particularly pertinent here, a common feature of those arrangements is an escrow account, maintained by the authorized carrier, "to insure performance and to cover repair expenses, license and permit costs, and any claims that might arise out of carriage of the goods." *Global Van Lines, Inc.* v. *ICC*, 627 F.2d 546, 548 (D.C. Cir. 1980) (citing H.R. Rep. No. 1812, 95th Cong., 2d Sess. 11 (1978)), cert. denied, 449 U.S. 1079 (1981). If the parties choose to utilize such an escrow account, the Truth-in-Leasing regulations require the lease to specify such basic matters as the amount in the fund; the items to which the fund may be applied; the lessor's right to an accounting; and the lessor's right to a refund of any fund balance at the end of the leasing

arrangement within 45 days, with interest. 49 C.F.R. 376.12(k).

2. The ICC was abolished in the ICC Termination Act of 1995, Pub. L. No. 104-88, Tit. I, 109 Stat. 804. Congress did not, in the ICC Termination Act, alter the Truth-in-Leasing regulations regime applicable to the motor carrier industry, but Congress did significantly alter the enforcement mechanisms with the enactment of a private cause of action in 49 U.S.C. 14704, "Rights and remedies of persons injured by carriers or brokers," which provides:

> (a) In General.—
>
> > (1) Enforcement of order.—A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.
> >
> > (2) Damages for violations.—A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

49 U.S.C. 14704 (Supp. III 1997). Although there had been no requirement for it to do so, the former ICC had adopted the practice of resolving various disputes that

arose under the agency's commercial rules governing the conduct of the motor carrier industry, including owner-operator leasing disputes. When Congress transferred the underlying statutory authority underpinning those rules to the Department of Transportation (DOT), the House Report made clear its intent that the DOT should not continue the ICC's practice of resolving the private disputes:

> The bill transfers responsibility for all the areas in which the ICC resolves disputes to the Secretary (except passenger intercarrier disputes). The Committee does not believe that DOT should allocate scarce resources to resolving these essentially private disputes, and specifically directs that DOT should not continue the dispute resolution functions in these areas. The bill provides that private parties may bring actions in court to enforce the provisions of the Motor Carrier Act. This change will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved—by the parties.

Pet. App. 5a-6a (quoting H.R. Rep. No. 311, 104th Cong., 1st Sess. 87-88 (1995) (emphasis omitted)).

3. On August 14, 1997, respondent Owner-Operator Independent Drivers Association, Inc., and several named owner-operators brought a class action suit in the district court against petitioners, alleging that petitioners had violated the Truth-in-Leasing regulations and seeking damages for those violations. Pet. App. 3a-4a, 18a. Petitioners moved to dismiss on grounds of primary jurisdiction, failure to state a claim, and preemption. *Id.* at 20a. The district court granted

the motion on primary jurisdiction grounds. *Id.* at 23a. Although the district court believed it had jurisdiction to adjudicate the owner-operators' complaint, it noted that DOT's Federal Highway Administration (FHWA) had concurrent jurisdiction. *Id.* at 22a. The doctrine of primary jurisdiction was invoked because, in the district court's view, the FHWA's "intimate knowledge of [the Truth-in-Leasing] regulations and the reasoning behind them" placed the agency "in a better position than the Court" to determine the merits of petitioners' contention that the regulations did not control this particular case. *Ibid.* In reaching that decision, the district court did not seek, or obtain, the views of the FHWA.

The owner-operators appealed from that dismissal and, simultaneously, petitioned the FHWA for clarification of its role in this matter. The owner-operators sought an order from the FHWA declaring, *inter alia*, "that applicable law does not confer upon the FHWA primary jurisdiction * * * in private commercial Federal Court litigation arising under 49 U.S.C. § [] 14704, and that such matters should be resolved by the Federal Courts pursuant to the ICC Termination Act." Pet. App. 52a-53a.

On May 29, 1998, the FHWA issued an order stating that the agency had no basis for it to become involved in this private commercial dispute. Pet. App. 24a-30a. The agency agreed with the owner-operators that FHWA's specialized expertise was "generally not needed" in disputes of this nature because the regulations set forth "straightforward, non-technical requirements which a court is ordinarily competent to construe." *Id.* at 29a. Accordingly, "the FHWA will generally decline [to] exercise its primary jurisdiction

with regard to court referrals involving" the Truth-in-Leasing regulations. *Ibid.*

Subsequently, the court of appeals consolidated several petitions for judicial review of the FHWA's declination decision with the owner-operators' appeal from the district court's dismissal of their complaint. Pet. App. 4a-5a. Petitioners and their amicus curiae American Trucking Association argued, *inter alia*, that the district court's judgment should be affirmed on the ground that a private cause of action for damages could not be brought under 49 U.S.C. 14702(a) (Supp. III 1997) because the statute provided for suits by persons alleging injuries arising from a violation of an "order" of the Secretary of Transportation. The court of appeals agreed with petitioners on that point, holding that the term "order" could not be construed to include a violation of an agency regulation. Pet. App. 9a-10a.

The court of appeals, however, did find authority for the district court to entertain those suits under the second sentence of 49 U.S.C. 14704(a)(1) (Supp. III 1997): "A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103." The court stated:

> Though this sentence refers only to violations of the statute, it must also include violations of FHWA's implementing regulations. Because § 14102 contains no mandates or prohibitions but simply authorizes the Secretary to adopt leasing requirements, it would be impossible for a carrier to violate the statute other than by violating rules or regulations promulgated under the statute.

Pet. App. 11a. The court expressly rejected petitioners' argument that the second sentence of Section 14704(a)(1) was limited to actions to enforce agency "orders,"

since that term is found in the first sentence of the Section. The court concluded that the second sentence's "plain language is not limited to violations of agency orders" and that petitioner's approach to the sentence would render it mere surplusage because "a party suing to enforce an agency order is unlikely to need relief beyond enforcement of the order." Pet. App. 12a. The court further noted that its reading of the second sentence was supported by the Conference Report, which expressly indicated that private actions could be brought to enforce the Truth-in-Leasing rules. *Id.* at 12 n.3.

The court of appeals also rejected petitioners' effort to set aside the FHWA's decision not to utilize its enforcement resources in pursuit of the owner-operators' allegations. Pet. App. 15a-16a (citing *Heckler* v. *Chaney*, 470 U.S. 821, 837 (1985) (agency decisions not to institute proceedings are presumptively unreviewable under the Administrative Procedure Act)). Accordingly, the court reversed the district court's dismissal of the owner-operators' lawsuit and denied the petitions seeking review of the agency's declaratory order. Pet. App. 17a.

ARGUMENT

The interlocutory decision of the court below, addressing a jurisdictional issue that is not related to the merits of the underlying dispute, is correct and does not conflict with any other court of appeals decision. Further review therefore is not warranted.

1. The court of appeals correctly observed that, unless the second sentence of 49 U.S.C. 14702(a)(1) (Supp. III 1997) is construed to permit private actions to enforce the provisions of the Truth-in-Leasing regulations, that sentence is rendered surplusage. See Pet.

App. 12a. Moreover, in allowing the owner-operators' private enforcement suit to proceed in the district court, the judgment below is precisely what Congress intended when it added the second sentence during its consideration of the ICC Termination Act. See *ibid.*

Petitioners, however, ask this Court to infer an intent of Congress not to create a private right of action from the lack of a statute of limitations provision applicable to Section 14702(a). Pet. 10-13. That contention is unpersuasive. The omission of a federal statute of limitations, an oversight that is "commonplace in federal statutory law," *Board of Regents* v. *Tomanio*, 446 U.S. 478, 483 (1980), cannot detract from Congress's specific intent to provide that "[a] person may bring a civil action," 49 U.S.C. 14704(a)(1) (Supp. III 1997). When Congress has omitted a statute of limitations in other statutes, the federal courts have applied the analogous state statute of limitations. See, *e.g.*, *North Star Steel Co.* v. *Thomas*, 515 U.S. 29, 33-34 (1995). With respect to civil actions arising under federal statutes enacted after December 1, 1990, such as the instant case, a four-year limitations period applies. See 28 U.S.C. 1658.

2. There is no conflict among the courts of appeals. Petitioners themselves correctly characterize the decision below as involving a matter of "first impression in the courts of appeals." Pet. 2. Their assertion of an intracircuit conflict with *DeBruce Grain, Inc.* v. *Union Pacific Railroad*, 149 F.3d 787 (8th Cir. 1998), is unpersuasive.

As petitioners concede (Pet. 8 n.3), the statutory provisions governing enforcement of the railroad regulations (49 U.S.C. 11701-11707 (1994 & Supp. III 1997)) that were construed in *DeBruce Grain* do not contain language parallel to that added by Congress in the ICC Termination Act of 1995 as the second sentence of 49

U.S.C. 14704(a)(1) (Supp. III 1997). Moreover, petitioners fail to point out that the jurisdictional provision involved in *DeBruce Grain* confers *exclusive* jurisdiction over certain types of railroad matters on the Department of Transportation's Surface Transportation Board. See *DeBruce Grain, Inc.* v. *Union Pac. R.R.*, 983 F. Supp. 1280, 1283 (W.D. Mo. 1997) (construing 49 U.S.C. 10501 (Supp. III 1997)). The corresponding provision addressed by the court below, which deals with disputes concerning the motor carrier industry, does not include that exclusivity language. Cf. 49 U.S.C. 13501 (Supp. III 1997). Thus, the *dictum* in the Eighth Circuit's *DeBruce Grain* decision (quoted at Pet. 7) does not address the issue raised in the instant petition, and, in any event, is not in any way inconsistent with the holding of the court below. And even if there were an intracircuit inconsistency, that would be a matter for the court of appeals, rather than this Court, to resolve. *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

CONCLUSION

The petition for a writ of certiorari should be denied.

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MARCH 2000

Supreme Court, U.S.
FILED
MAR 20 2000
CLERK

No. 99-1169 (S)

In The

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NEW PRIME d/b/a PRIME, INC.
and SUCCESS LEASING,

Petitioners,

vs.

OWNER OPERATORS INDEPENDENT DRIVERS
ASSOCIATION, INC., ET AL.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

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INTRODUCTION

Respondents' brief in opposition merely highlights the importance of this case. By acknowledging that OOIDA's approximately 47,000 members now have a private civil action for damages and injunctive relief for perceived violations of agency *regulations* (Resp. Br. 1), respondents unwittingly hint at the flood of federal litigation to come. And by failing to meaningfully distinguish cases interpreting the parallel rail carrier provisions of the ICC Termination Act, respondents effectively acknowledge that the confusion that exists in the lower courts is widespread.

ARGUMENT

Respondents' Arguments, If Anything, Support Petitioner's Point That the Eighth Circuit Has Created a Federal Private Right of Action Where None Exists.

A. Respondents Fail to Explain The Statutory Language that the Eighth Circuit Acknowledged was Inconsistent.

The Eighth Circuit confessed to being "rather mystified" by the "inconsistent language used in the Termination Act's various enforcement provisions." (Pet. App. 13a). Respondents' brief, and the Government's brief, are singularly unhelpful in addressing the statute's failings.

Contrary to respondents' argument, the second sentence of 49 U.S.C. § 14704(a)(1) does not become "mere surplusage" if no private right of action is inferred. That sentence, as well as the provisions of § 14704(a)(2),

instead make plain that a party granted a right to sue to "enforce an agency order" under § 14704(a)(1) may, as part of that same action, recover damages and injunctive relief in addition to enforcement. Respondents' suggestion that these provisions somehow authorize a suit to enforce *regulations*, when the statute (including the applicable limitations provisions) specifically refers only to *orders*, is not a supportable reading of the statute.

These provisions are causing confusion in the lower courts. The Court should consider whether the imprecise language in these provisions should be used to dramatically expand federal jurisdiction.

B. Respondents Fail to Meaningfully Distinguish the Cases Rejecting a Private Right of Action Under the Parallel Rail Provisions of the ICC Termination Act.

Respondents try to distinguish the two lower court cases[1] that appear to have interpreted the parallel rail provisions of the ICC Termination Act as foreclosing a private right of action to challenge agency regulations. Their distinction is simply that the Surface Transportation Board, which enforces the rail carrier provisions, has "exclusive" jurisdiction, while the FHWA, which enforces the motor carrier provisions, does not. This distinction is meaningless.

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[1] *DeBruce Grain, Inc. v. Union Pacific R.R.*, 983 F. Supp. 1280, 1284 (W.D. Mo. 1997), *aff'd on other grounds*, 149 F.3d 787 (8th Cir. 1998); *City of Laredo v. Texas Mexican Ry.*, 935 F. Supp. 895, 898 (S.D. Tex. 1996).

The question under both the ICC Termination Act rail provisions and the motor carrier provisions is whether Congress intended to create a private right of action for violations of agency regulations. The provisions addressing this question in both statutes are identical in all material respects. *Compare* 49 U.S.C. §§ 11704, 11705 *with* 49 U.S.C. §§ 14704, 14705.[2] The plain language of both statutes permits private suits only to enforce agency "orders," not "regulations." The fact that the Surface Transportation Board has exclusive jurisdiction, except as modified in the ICC Termination Act, has no bearing on this issue. Thus decisions interpreting the parallel rail provisions are directly relevant to the question of whether *any* agency regulations, be they those of the Surface Transportation Board or the FHWA, may be privately enforced under the ICC Termination Act without first obtaining an agency order.

The fact that, until this case was decided, every court to interpret the nearly identical ICC Termination Act rail provisions and motor carrier provisions concluded that these provisions permit private suits only to enforce agency "orders," not "regulations," shows that the confusion in the lower courts is more widespread than respondents or the Government acknowledge.

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[2] The court in *Renteria v. K&R Transportation, Inc.*, Case No. CV98-290MRP (C.D. Cal. February 23, 1999) (Pet. App. G 54a-66a), recognized that the motor carrier and rail carrier provisions are "identical in all material respects."

C. Respondents' Reliance on the 1990 "Catch-All" Statute of Limitations is Misplaced.

The ICC Termination Act sets out at least five different limitations periods in its motor carrier section. *See* 49 U.S.C. § 14705. These limitations periods expressly refer only to private actions to enforce agency "orders," not "regulations." *See* 49 U.S.C. § 14705(e). As two federal courts have expressly recognized, Congress's failure to enact a specific limitations period governing actions to enforce "regulations" serves to reinforce the plain language of the statute, which limits private rights of action to enforcement of "orders." *See DeBruce*, 483 F. Supp. at 1284; *Renteria v. K&R Transp. Co.*, Case No. CV98-290MRP (C.D. Cal. February 23, 1999) (Pet. App. G 54a-66a).

Respondents suggest that the "catch-all" limitations provision passed by Congress in 1990, five years before the ICC Termination Act, somehow changes this analysis. But 28 U.S.C. § 1658 only applies to statutes creating *new causes action* after December 1, 1990, not those that merely redefine existing causes of action like § 14704(a). *Lane v. Ogden Entertainment, Inc.*, 13 F. Supp. 2d 1261 (M.D. Ala. 1998). Further, simply because a general limitations statute exists to cover Congress's inadvertent omissions cannot mean that Congress, in the course of setting out five specific limitations periods in the ICC Termination Act, intended to authorize actions to enforce "regulations" when it only mentioned "orders." As the Eighth Circuit acknowledged, the distinction between orders and regulations is a real one in this case, and one that the agency has conceded. (Pet. App. 11a n.2). The conspicuous absence of a limitations period covering actions to

enforce agency "regulations" from the ICC Termination Act, coupled with the express language in the statute limiting private enforcement actions to those seeking enforcement of "orders," shows conclusively that the Eighth Circuit has unwisely expanded federal jurisdiction beyond the clear language of the statute.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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March 20, 2000